INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
OF THE ORGANIZATION OF AMERICAN STATES

Case No. P-624-14

THE ONONDAGA NATION and THE HAUDENOSAUNEE

against

THE UNITED STATES OF AMERICA

The Onondaga Nation and the Haudenosaunee Confederacy

SUPPLEMENTAL SUBMISSION
BRIEF ON THE MERITS

Representative of Petitioners

Tadodaho Sidney Hill,
Onondaga Nation
1009 Martins Lane
Via Nedrow, New York
Telephone: (315) 447-4851

Attorneys for Petitioners:

Joseph J. Heath
Onondaga Nation General Counsel
512 Jamesville Avenue
Syracuse, New York 13210
Telephone: (315) 447-4851
Email: jjheath1946@gmail.com

Andrew B. Reid
Native Justice, LLC
1075 Waite Drive
Boulder, Colorado 80303
Telephone: (303) 437-0280
Email: kota@nativejustice.net

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I. INTRODUCTION

1. The Onondaga Nation (the "Nation") and the Haudenosaunee Confederacy (the "Confederacy") (collectively the "Petitioners") appreciate the opportunity to submit these addition observations on the merits of its claims of human rights violations by the United States.

2. The Petition asserts violations of the American Declaration on the Rights and Duties of Man ("American Declaration"), including the right to property protected by Article XXIII, the right to equality protected by Article II, and the right to a judicial remedy (a fair trial / judicial protection) protected by Article XVIII. These rights are supported by a wide body of international law, including laws specifically addressing the rights of colonized peoples and the rights of indigenous peoples such as the Petitioners.

3. By Its Report of May 12, 2023, the Inter-American Commission on Human Rights (the "Commission") admitted the Article II (right to equality before the law) and Article XVIII (right to fair trial / judicial protection) claims for a decision on the merits.[1] The Commission denied the admissibility of the Petitioners' Article XXIII (right to property) claim on the basis of *ratione temporis*. While finding that the Petition stated sufficient facts to demonstrate the misappropriation of the Petitioners' property, the Commission ruled that it did not have competence to hear the violation where the misappropriation took place between 1788 and 1822.[2]

4. On September 14, 2023, the Petitioners submitted to the Commission a Motion for Reconsideration of its ruling and conclusion on the Petitioners' Article XXIII right to property. Petitioners therein contend that the Commission erred in its ruling by not acknowledging that the deprivation of Petitioners' right to property pursuant to a continuing racist and colonial domination and rule is not just an event in history but a continuing deprivation and violation of Petitioners' rights to their territory and property as this Commission recognized and affirmed in the case of Mary and Carrie Dann v. United States.[3] The United States failed to respond or otherwise oppose the Petitioners' Motion. The Commission has not yet ruled upon the Petitioners' Motion for Reconsideration. The Petitioners therefore adopt by reference and renew here their request for the Commissions' reconsideration of its ruling on the Petitioners' Article XXIII right to property as a current and continuing violation. Accordingly, Petitioners include herein supplemental submissions on that violation as well.

5. On August 22, 2022, the United States submitted its Response to the Onondaga Nation and Haudenosaunee Confederacy's Petition (hereafter "US Response"), and on page 4 therein, made this clear admission to all factual allegations set forth in the

[1] IACHR, Report No. 51/23, Petition No. 624-14, The Onondaga Nation (United States), Admissibility, May 12, 2023, at paras. 43-49.
[2] *Id*. at paras. 41-42.
[3] IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), Merits, December 27, 2002, paras. 166-167.

Petition: "For purposes of responding to this Petition, the United States does not the (sic) dispute the factual background set out by Petitioners regarding the reservation and alienation of their lands." The United States has conceded that all of the factual and historical allegations in the Petition are accurate and therefore did not and does not contest any of the factual allegations contained in the Petition.

6. By contrast, the Petitioners have submitted 1000s of pages of expect historical and legal declarations, along with scores of documents, which have categorically proven its allegations. Particularly, on October 13, 2017, the Petitioners submitted their extensive Response to Request of IACHR for Additional Information, to which were annexed nineteen (19) annexes, at least seven (7) of these were lengthy expert declaration by historical and legal experts. These were in addition to the eleven (11) Annexes which were attached to the original, 2014 Petition.

7. Given the combination of the extensive proof submitted by the Petitioners to date and the complete lack of any counter factual allegations or proof by the United States, and historical and legal facts in the Petition must be accepted as true.

8. However, out of an abundance of caution, the Petitioners briefly summarize below the historical and legal proof submitted in support of their Petition and evidencing the human rights violations of the United States. As noted above, the proof of the Petitioners' factual allegations was submitted to the Commission in two major filings: (a) the April 14, 2014 Petition and its eleven (11) Annexes, and then the October 13, 2017 Response to the IACHR's Request for Additional Information, with its nineteen (19) annexes. These documents will be referenced as "Petition, Ex. A", and "Petitioners' Response, Ex B" respectively.

9. Petition Paragraphs 3, 4, 76 through 81, and 126 through 136 set forth the manner in which United States courts have completely denied any remedy to the Petitioners for the clear violations of the three treaties between the Haudenosaunee Confederacy (including the Onondaga Nation) and the United States. The US courts have dismissed the Onondaga, Oneida and Cayuga land rights cases, because the illegal takings of the original lands, though continuing in nature and effect, took place more than 200 years ago, and because the US colonial courts have concluded, without any proof or hearings, that satisfaction of the Petitioners' claims would "disrupt" the "reasonable expectations of the colonial settlers who now occupy the lands.

10. At the core of Petitioners' claims is the failure of the colonial power, the United States, to provide any legal remedy, let alone an equal, fair, adequate, and effective one, under its "*sui generis*" (racially applied) domestic law for the unlawful taking of Onondaga property - its territory, land, and resources. See, Petition Paragraphs 3 and 4.

11. The domestic law of the United States purportedly governing the Petitioners, "federal Indian law", arose out of the colonial and racist relationship imposed by the

United States upon preexisting Indigenous nations and peoples for the purpose of subjugating Indigenous peoples and nations to colonial rule and to legitimize the colonizer's claims to, and exploitation of, Indigenous territories, lands, and natural resources. Paragraphs 76 through 80 and Paragraphs 126-136.

12. Regarding these underlying facts of US colonial domination and rule over the Haudenosaunee Confederacy and the Onondaga Nation, continuing to the present day, the Commission's attention is drawn to these submissions in the record of this case:

A. Section VII of the Petitioners' Response, and paragraphs 86 through 92 thereof;
B. Annex 7 to the Petition—the City of Sherill decision for the United States Supreme Court;
C. Annex 8 to the Petition—the dismissal of the Cayuga Nation land claim by the United States Second Circuit Court of Appeals;
D. Annex 9 to the Petition—the dismissal of the Oneida Nation land claim by the United States Second Circuit Court of Appeals;
E. Annex 9 to the Petition—the dismissal of the Onondaga Nation land rights action by the United States District Court for the Northern District of New York;
F. Annex 10 to the Petition—the dismissal of the Onondaga Nation land rights action by the United States Second Circuit Court of Appeals;

13. Petition Paragraphs 16 through 33 and 53 through 56 set forth the pre-colonial existence of the Onondaga peoples and sovereign Nation, their pre-colonial existence as a member nation in the Haudenosaunee Confederacy, and their pre-colonial occupation of their ancestral territory for over one thousand years.

14. The United States does not dispute that the Onondaga Nation and its peoples were stewards of a vast area of land in what is now New York State prior to the arrival of the European colonists in the early 1600s. On these facts, the Commission's attention is drawn to Petitioners' Response, the Declaration of Tadodaho Sidney Hill ("the Hill Declaration"), paragraphs 7, 10, 15 and 32, in the record of this case.

15. Paragraphs 5, 20, 27 through 33, and 83 through 86, relate the formal recognition by the United States of the Onondaga Nation and the Haudenosaunee Confederacy as sovereign, independent, nations and of their territories in three treaties by which the United States committed to protect and secure the Nation and the Confederacy in their territory and property.

16. On these facts, the Commission's attention is drawn to the following in the record of this case:

A. Annex 1 to the Petition—the 1784 Treaty of fort Stanwix;
B. Annex 2 to the Petition—the 1789 Treaty of fort Harmor;
C. Annex 3 to the Petition—the 1794 Treaty of Canandaigua;
D. Petitioners' Response, Hill Declaration, paragraphs 12, 13 and 47;
E. Petitioners' Response, Declaration of Professor Robert D. Bieder, attached thereto as Exhibit E, paragraphs 7 through 39;
F. Petitioners' Response, Declaration of Robert T Coulter, Esq., attached thereto as Exhibit F, paragraphs 15 through 17; and
G. Petitioners' Response, Declaration of Professor Anthony C. Wallace, attached thereto as Exhibit R, paragraph 12.

17. Petition Paragraphs 24 through 26 describe the unlawful invasion of Onondaga and Confederacy territories and the massacres of their people by European and American colonists. On these facts, the Commission's attention is drawn to the previous citations to the record and to Petitioners' Response, Hill Declaration, paragraph 11.

18. Petition Paragraphs 34 through 52 describe the unlawful and purported taking of the territories, lands, and natural resources of the Petitioners by a subdivision of the United States, the state of New York ("New York"). On these facts, the Commission's attention is drawn to the following in the record of this case: Petitioners' Response, Wallace Declaration, paragraphs 8, 24 through 30 and 31 through 44; and to Petitioners' Response, Declaration of Professor J. David Lehman, attached thereto as Exhibit Q, paragraphs 4 through 60.

19. Paragraphs 5 and 76 through 136 set forth the abject failure of the United States to meet its treaty obligations to protect the Onondaga Nation and Haudenosaunee Confederacy from such takings by its subdivision.

20. Regarding these facts, the Commission's attention is drawn to the following in the record of this case:

A. Petitioners' Response, Hill Declaration, paragraph 38;
B. Petitioners' Response, Coulter Declaration, paragraphs 18 through 25 and 56 through 71;
C. Petitioners' Response, Exhibits G, H, I, J, K, L and M;
C. Petitioners' Response, Bieder Declaration, paragraphs 9 through 22; and
D. Petitioners' Response, Wallace Declaration, paragraphs 27 through 44 and 53 through 70.

21. Some of the attendant past, present, and continuing harms the people of the Nation have suffered in addition to the loss of their territory, lands, and natural resources are described in Paragraphs 4 and 53 through 56, including their separation from their traditional hunting, gathering and fishing areas, the deprivation of food and other resources necessary for their well-being and survival, the separation from their sacred lands where their ancestors are buried, the interference with their sacred duty to care for ancestral lands and gravesites, and the severe harm to their culture and survival. On these facts, the Commission's attention is drawn to the record, Petitioners' Response, Hill Declaration, paragraphs 15 through 17 and 22 through 23.

22. Paragraphs 57 through 75 relate the subsequent and continuing exploitation and severe contamination of Onondaga lands and people by extractive industries licensed by the United States and New York. Regarding these facts, the Commission's attention is respectfully drawn to the record, Petitioners' Response, Declaration of Joseph J. Heath, Esq., attached thereto as Exhibit B, paragraphs 51 through 58.

23. At the core of Petitioners' claims is the failure of the colonial power, the United States, to provide any legal remedy, let alone an equal, fair, adequate, and effective one, under its racist domestic law for the unlawful taking of Onondaga property - its territory, land, and resources. See, Petition Paragraphs 3 and 4. The domestic law of the United States purportedly governing the Petitioners, "federal Indian law", arose out of the colonial relationship imposed by the United States upon preexisting indigenous nations and peoples for the purpose of subjugating indigenous peoples and nations to colonial rule and to legitimize the colonizer's claims to and exploitation of indigenous territories, lands, and natural resources. Paragraphs 76 through 80.

24. The United States does not dispute that at the time of the invasions of the America by the imperial nations of Europe and long before the formation of the United States, indigenous nations and peoples "were self-governing sovereign political communities"[4] which engaged in war with the invading powers including the United States, in negotiations between sovereign powers, and in the treaty-making of sovereign nations.

25. At the time of the concoction of federal Indian law in three decisions by US Supreme Court Chief Justice John Marshall some 50 years after the creation of the United States and over 350 years after Columbus's arrival in the Caribbean, the United States had only shortly before entered into treaties with the Onondaga Nation and the Haudenosaunee and was still entering into many treaties with other sovereign indigenous nations. The doctrines Marshall concocted *post-facto* to justify assuming colonial

[4] *See*, United States v. Wheeler, 45 U.S. 313, 322-323 (1978).

authority over "Indian" nations and peoples admitted that the United States's domestic, colonial, federal Indian law is premised on legal fictions and "extravagant pretensions"[5] that apply *only* (*sui generis*),[6] to one race or ethnic group, the "Indian"[7] nations and peoples that pre-existed the United States and the invasion of the Americas by the imperial nations of Europe. Federal Indian law as it was created then and continues to exist today is the manifestation of racist colonial law by an occupying colonial State.

26. The first underlying colonial doctrine of federal Indian law is referred to as the "**Doctrine of Discovery**" by which the territories long occupied by "Indian" nations and peoples, including the Onondaga and the Confederacy, are legally deemed to be *terra nullius*, vacant lands open for taking, exploitation, and occupation by the first imperial European Christian nation to "discover" them.[8] Chief Justice Marshall held: "So far as respected the authority of the crown, no distinction was taken between vacant lands and lands occupied by the Indians."[9] He rested his decision upon White, European cultural, and Christian supremacy: "the character and religion of its inhabitants afforded an apology for considering them as a people over whom the superior genius of Europe might claim an ascendency."[10] In reaching this legal fiction, Justice Marshall reasoned that indigenous peoples did not claim, own, their lands under European property law because of their customary law of a spiritual, familial, relationship and belief that no one could "own" the earth.[11] According to Marshall, legal title to land was acquired by cultivation, a European property law concept foreign to Indians. Rather, the Indians "held their respective lands and territories each in common, …there being among them no separate

[5] Johnson v. M'Intosh, 21 U.S. 543, 590, 591 (1823) ("fiction", "pretense", "extravagant pretensions", "pompous" colonial claims); Worcester v. Georgia, 21 U.S. 515, 544 (1832) ("extravagant and absurd idea").
[6] M'Intosh, 21 U.S. at 591-2 ("some new and different rule"); Cherokee Nation v. State of Georgia, 30 U.S. 1, 2, 17 (1831) ("They may more correctly perhaps be denominated domestic dependent nations."); *also*, Wenona T. Singel, "Indian Tribes and Human Rights Accountability," 49 San Diego L. R. 567, 594 (" The Court therefore created a sui generis category to define the political status of Indians as retaining rights of inherent self-government yet still dependent upon and subordinate to the ultimate power of the federal government.").
[7] The term "Indian" is an exonymic racial and ethnic branding of indigenous peoples of the Americas by European racial, cultural, and religious supremists, imperialists, and colonialists which denies the sovereign status of the indigenous nations and peoples the Americas and demeans them as lesser nations, peoples, and human beings. It is used here and elsewhere in this submission in its imperial / colonial sense.
[8] M'Intosh, 21 U.S. at 595 (doctrine of discovery of uninhabited lands "principle of universal law").
[9] M'Intosh, 21 U.S. at 596; Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 283-85 (1955) (the United States has no legal liability for the taking of unrecognized Native territory).
[10] M'Intosh, 21 U.S. at 573, 589. This repeated the original rationale and authority of racial, cultural, and religious supremacy from the Universal Church over 300 years earlier for the colonization of the Americas and Africa by Christian European empires. *Id*., 21 U.S. at 574 (citing to the Papal Bulls of 1455 (Romanus Pontifex) and 1493 (Inter Caetera). The Church recently repudiated the Doctrine and contends that these Papal documents were misconstrued and improperly manipulated for political purposes by competing colonial powers. "Joint Statement of the Dicasteries for Culture and Education and for Promoting Integral Human Development on the 'Doctrine of Discovery,' 30.03.2023,"
https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2023/03/30/230330b.html.
[11] M'Intosh, 21 U.S. at 570 (citing to John Locke's theory on property).

property in the soil."[12] Justice Marshall further opined that Indians, as "uncivilized" "savages" and "heathens" (non-Christians), were required to give way and relinquish their lands to the ***superior race, civilization, culture, and religion*** of the imperial nations of Europe.[13]

27. Marshall ruled that Indian nations possessed a mere "right of occupancy and use", but not fee ownership and that such right was subject to the extinguishment of that bare usufructuary right at any time by the unfettered colonial will of the United States.[14]

28. The United States purported to succeed to the colonial ownership of its imperial European predecessors and expanded its domain as a colonial nation over indigenous nations on its own.[15] The United States in its relationship to Indigenous nations and peoples was and continues to be as a successor colonial and colonial State and empire.

29. This Doctrine of Imperial Theft is still the current and controlling law of the United States in its relationship with the Onondaga Nation, the Haudenosaunee Confederacy, and other Native nations and peoples.[16] Everything flows from that continuing colonial relationship. *See*, Paragraphs 11-12, 16-20 above.

30. The second colonial doctrine of federal Indian law is known as the "**trust doctrine**" by which as a matter of judicial fiat "Indian" nations and peoples, as so-called incompetent uncivilized heathen savages, are declared to be "dependent" "domestic" nations (and peoples), wards of the colonial guardian (ruler), self-entitled as "the Great White Father" while in a "state of pupilage".[17]

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[12] M'Intosh, 21 U.S. at 549-50.

[13] M'Intosh, 21 U.S. at 573, 596; Special Rapporteur of the Permanent Forum on Indigenous Issues, *Preliminary Study of the Impact on Indigenous Peoples of the International Legal Construct Known as the Doctrine of Discovery*, Econ. & Soc. Council, U.N. Doc. E/C. 19/2010/13 (Feb. 4, 2010) (by Tonya Gonnella Frichner). *See also, generally*, Robert A. Williams, THE AMERICAN INDIAN IN WESTER LEGAL THOUGHT: THE DISCOURCES OF CONQUEST (1990); Steven T. Newcomb, PAGANS IN THE PROMISED LAND (2008).

[14] M'Intosh, 21 U.S. at 574, 588, 590, 596, 603 ("the Indian inhabitants are to be considered merely as occupants …incapable of transferring absolute title to others."); see also, e.g., Oneida County, N.Y. v. Oneida Indian Nation of New York State, 470 U.S. 226, 233-34 (1985) ("It was accepted that Indian nations held 'aboriginal title' to lands they had inhabited from time immemorial. [citation omitted] The 'doctrine of discovery' provided, however, that discovery nations held fee title to these lands, subject to the Indians' right of occupancy and use."); United States v. Dion, 476 U.S. 734, 738 (1986) ("It is long settled that the provisions of an act of Congress …must be upheld by the courts, even in contravention of express stipulations in an earlier treaty with a foreign power. This Court applied that rule to congressional abrogation of Indian treaties in Lone Wolf v. Hitchcock, [187 U.S. 553, 566 (1903)]." Citations omitted.).

[15] M'Intosh, 21 U.S. at 580-89.

[16] City of Sherrill, N.Y. v. Oneida Indian Nation of New York, 544 U.S. 197, 203 n. 1 (2005); Oneida, 470 U.S. at 233-34 (1985).

[17] Cherokee Nation, 30 U.S. at 17 ("They may more correctly perhaps be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will… [T]hey are in a state of pupilage. Their relations to the United States resemble that of a ward to his guardian. They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their great

31. The concoction of a relationship of tutelage colonialism by the colonial power deprived all "Indian" nations and peoples of their pre-existing international personality.[18] By imposing as a matter of domestic law a trust relationship upon indigenous nations and peoples, the United States assumed authority to act in the stead of its purportedly incompetent Indigenous wards over their residual lands, resources, and other assets.[19] For example, the United States today holds in trust, controls and manages, over 56 million acres of Native land.[20] Under domestic trust law, the ward's legal personality is largely denied in favor of the guardian.[21] The trust relationship is effectively a racist and political means by which the colonial power maintains its continuing dominance and control over Native nations and people and their lands, natural resources, and other assets.[22] Indigenous nations and people are the only race, ethnicity, peoples, and nations subject to trust domination and deprivation of their pre-existing independent legal persona and rights by the United States.

32. As the colonial ruler and assumed "guardian", the United States assumes "**plenary power**" over Indian nations and peoples and their property and assets, the third colonial doctrine of federal Indian law.[23] Petition Paragraph 80. "As we have often noted, *Indian tribes occupy a unique status under our law. At one time they exercised virtually unlimited power over their own members as well as those who were permitted to join their communities. Today, however, the power of the Federal government over the Indian*

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father."); Ex parte Kan-gi-shun-ca, 109 U.S. 556, 568-69 (1883) ("They were nevertheless to be subject to the laws of the United States, not in the sense of citizens, but, as they had always been, as wards, subject to a guardian, not as individuals, constituted as members of the political community of the United States, with a voice in the selection of representatives and the framing of the laws, but as a dependent community who were in a state of pupilage, advancing from the condition of a savage tribe to that of a people who, through the discipline of labor, and by education, it was hoped might become a self-supporting and self-governed society.")

[18] Cherokee Nation, 30 U.S. 1. The US Congress sealed the deprivation of an international persona of indigenous nations with the Act of 1871 which declared the "[n]o Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power whom the United States may contract by treaty" and ended the practice of treaty-making between the US and indigenous nations. Indian Appropriations Act, 41st Congress, Sess. III, Ch. 119-120 (March 3, 1871), 25 U.S.C. Sec. 71.

[19] United States v. Sioux Nation of Indians, 448 U.S. 371, 409 n. 26 (1980); Seymour v. Superintendent of Washington State Penitentiary, 368 U.S. 351, 356 1962);

[20] US Dept. of the Interior, "Native American Ownership and Governance of Natural Resources," Nat. Res. Revenue Data (accessed January 26, 2023), https://revenuedata.doi.gov/how-revenue-works/native-american-ownership-governance/#:~:text=In%20general%2C%20most%20Native%20American,Native%20American%20tribes%20and%20individuals..

[21] United States v. White Mountain Apache Tribe, 537 U.S. 465, 474 n. 3 (domestic trust law provides "all of the necessary elements of a common law trust, there is no need to look elsewhere for the source of a trust relationship. We have recognized a general trust relationship since 1831.")

[22] Nadeau v. Union Pac. R. Co., 253 U.S. 442, 445-46 (1920) (affirming US power over indigenous lands); *see also*, Secretary, US Department of the Interior, *Reaffirmation of the Federal Trust Responsibility to Federally Recognized Indian Tribes and Individual Indian Beneficiaries*, Order No. 3335 (August 20, 2014).

[23] Cherokee Nation, 30 U.S. at 30 ("The power given in this clause [to make all needful regulations and rules respecting the territory of the United States, including Indian lands] is of the most plenary kind."; Lone Wolf v. Hitchcock, 187 U.S. 553, 564-67 (1903); Wilson v. Omaha Indian Tribe, 442 U.S. 653, 657 n. 1 (1912) (plenary authority over Indian lands incident to the trust authority over Indian nations and peoples).

tribes is plenary."[24] Under the Plenary Power Doctrine, the United States exercises complete and absolute power over Indian nations and peoples.[25]

33. By this assumed power, combined with its trust authority, the United States at its sole discretion creates, limits, and denies juridical personality and legal remedies to Indigenous nations and peoples and imposes its will on Indigenous nations, peoples, territory, lands, and natural resources in the service of its colonial interests and rule.[26] The United States claims the assumed plenary authority to violate at will and with impunity treaties with Indigenous nations,[27] to extinguish Indigenous territories,[28] and even to terminate the legal identities of Indigenous nations and peoples.[29]

34. As recently as 2020, the Supreme Court of the United States acknowledged the use of such plenary power in the violation of treaties with an Indigenous nation, the destruction of its traditional governance and judiciary, the theft of most of its lands, and the current legal power of the United States to extinguish at will the remaining territory of the Indigenous nation.[30] No other race or ethnicity is subject to the plenary power of the United States. The United States also assumes and exercises plenary authority over Indigenous nations, like its other colonized and occupied territories,[31] in violation of the international laws condemning and calling for the unconditional and immediate end of colonialism in all its forms and manifestations.[32]

35. It was under this assumed plenary power over the Onondaga Nation and the Haudenosaunee Confederacy that the United States ignored its treaty obligations (see,

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[24] Nat. Farmers U. Ins. Companies v. Crow Tribe of Indians, 471 U.S. 845, 851 (1985) (emphasis supplied).
[25] United States v. Wheeler, 435 U.S. 313, 319 (1978) (The United States possesses an "all-encompassing federal power" over Indian tribes "in all matters."
[26] See, e.g., Sioux Nation, 448 U.S. 371; Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56-57, 58 (1978) (The United States possesses "plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess. …This aspect of tribal sovereignty, like all others, is subject to the superior and plenary control of Congress."); South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 343 (1998) (Reaffirming that the United States possesses plenary power over all Indian affairs, including the power to modify or eliminate tribal rights – including the rights to property, lands, natural resources and territory.)
[27] Sioux Nation, 448 U.S. 371; United States v. Dann, 470 U.S. 39 (1985); The Cherokee Tobacco, 78 U.S. 616, 620 (1928).
[28] See, e.g., Sioux Nation, 448 U.S. 371; Rosebud Sioux Tribe v. Kneip, 430 U.S. 584 (1977); Tee-Hit-Ton, 348 U.S. 272.
[29] Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 169 n. 18 (1982) ("The United States retains plenary authority to divest the tribes of any attributes of sovereignty."); United States v. Wheeler, 435 U.S. 313, 319 (1978) ("Congress has plenary authority to legislate for Indian tribes in all matters, including their form of government"); Board of Comm'rs of Creek County v. Seber, 318 U.S. 705, 716 (1943); Termination Act of 1953, House Concurrent Resolution 108, 67 Stat. B132 (United States terminated the Klamath Nation and the Menominee Nation, along with over 100 other indigenous nations, by Act of Congress).
[30] McGirt v. Oklahoma, 140 S.Ct. 2452, 2481-82 (2020) (Congress remains free to withdraw an Indian reservation secured by treaty at any time).
[31] *See*, Puerto Rico v. Sanchez Valle, 579 U.S. 59, 71 (2016); Downes v. Bidwell, 182 U.S. 244, 289-90 (1901); Corp. of Presiding Biship Church of Latter-Day Saints v. Hodel, 830 F.2d 374, 375 (D.C.Cir. 1987). 130 (6) HARVARD LAW REVIEW (April 2016).
[32] *See*, paragraph 37, *infra*.

Paragraphs 15, 18, 20 above), designed and limited the only legal and insufficient remedies available to the Petitioners (Paragraphs 18 and 20 above), and licensed and facilitated the toxic contamination of the Onondaga Nation's ancestral lands (Paragraph 22 above). This exercise of White, European, and Christian supremacy, federal Indian law, has been described as "conquest by law."[33]

36. The past, present, and continuing acts of the United States set forth in Petitioners' Petition are those of a colonial occupier and ruler claiming ownership of the lands of, and exercising plenary power over, the Onondaga Nation and the Haudenosaunee Confederacy, and their people, territory, lands, and resources.

37. Colonialism is the act of power and domination of one nation, by acquiring or maintaining full or partial control over another sovereign nation.[34] Colonialism "*in all its forms and manifestations*" has been condemned by the members of United Nations for over 70 years.[35] In 1952, for example, in regard to colonized peoples and citing the UN Charter's provision for the "equal rights of peoples," the United Nations General Assembly acknowledged that "the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights."[36] The General Assembly in its Resolution of December 14, 1960 (UNGA Resolution 1514), reaffirmed the UN Charter's proclamation in 1945 of "the equal rights of …nations large and small," acknowledged that "all peoples have an ***inalienable*** right to complete freedom, the exercise of their sovereignty and the integrity of their national territory, recognized "that the peoples of the world ardently desire the end of colonialism in all its manifestations," and proclaimed "the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations."[37] UN General Assembly declared that "[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations" and, further that "[a]ll peoples have the right to self-determination, by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[38] On December 10, 2020, the UN General Assembly

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[33] Alexis de Tocqueville, "Future of Three Races – Part III" in DEMOCRACY IN AMERICA (1835), Chap. XVIII, a-b; Lindsay G. Robertson, CONQUEST BY LAW (2005).
[34] Cornell Law School, "colonialism," Legal Information Institute, https://www.law.cornell.edu/wex/colonialism.
[35] United Nations (General Assembly), *Declaration on the Granting of Independence to Colonial Countries and Peoples*, 14 December 1960, A/RES/1514(XV) (UNGA Res. 1514) (emphasis supplied); UN General Assembly, *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter*, 15 December 1960, A/RES/1541(XV); UN General Assembly, *The situation with regard to implementation of the Declaration on the granting of independence to colonial countries and peoples*, 27 November 1961, A/RES/1654(XVI).
[36] United Nations (General Assembly), *The right of peoples and nations to self-determination*, 16 December 1952, A/RES/637(VII).
[37] UNGA Res. 1514, preamble paras. 1, 6, 11, and 12 (emphasis supplied); United Nations, Charter of the United Nations (UN Charter), 24 October 1945, 1 UNTS XVI, preamble paras. 1, Art. 1(2).
[38] UNGA Res. 1514, Arts. 1 and 2.

resolved its "Fourth International Declaration for the Eradication of Colonialism," reaffirming "its determination to continue to take all steps to necessary to bring about the complete and speedy eradication of colonialism."[39]

38. In 1965, the UN General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD") which the United States has signed and ratified.[40] The Convention expressly acknowledged that "the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that [UNGA Resolution 1514] …has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end."[41] It affirmed the "necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations," and declared that "there is no justification for racial discrimination, in theory or in practice, anywhere."[42] The "State Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of elimination racial discrimination in all its forms"[43] and to "guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law."[44]

39. The UN Committee on the Elimination of Racial Discrimination ("UNCERD"), tasked with enforcing the ICERD, in 1997 issued General Recommendation XXIII affirming that "discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination."[45]

40. On March 3, 2006, The UNCERD issued a decision affirming that the domestic law of the United States regarding Indigenous land rights "did not comply with contemporary international human rights norms, principles and standards that govern the determination of indigenous property interests, as stressed by the Inter-American Commission on Human Rights in the case *Mary and Carrie Dann versus United States* (Case 11.140, 27 December 2002)." [46] The Committee held that actions taken by the United States regarding Indigenous ancestral lands violated the State's "obligation to guarantee the right to everyone [including the Western Shoshone indigenous nation] to

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[39] United Nations (General Assembly)*, Fourth International Declaration for the Eradication of Colonialism*, 10 December 2020, A/RES/75/123.
[40] United Nations (General Assembly), *International Convention on the Elimination of All Forms of Racial Discrimination* (1965) (ICERD), Treaty Series 660, 195 (signed by the United States in 1966 and ratified in 1994).
[41] ICERD, preamble paras. 3.
[42] ICERD, preamble paras. 4.
[43] ICERD, Art. 2, Sec. 1.
[44] ICERD, Art. 5.
[45] UN Committee on the Elimination of Racial Discrimination (UNCERD)*, General Recommendation No. 23, Rights of indigenous peoples*, U.N. Doc. A/52/18, annex V at 122 (1997).
[46] UNCERD, Western Shoshone National Council v. United States of America, Early Warning and Urgent Action Procedure, Decision 1(68), 8 March 2006.

equality before the law in the enjoyment of civil, political, economic, social and cultural rights, without discrimination based on race colour, or national or ethnic origin, …in particular their right to own, develop, control and use their communal lands, territories and resources."[47] In so ruling, the UNCERD recognized, as stated in the ICERD Preamble and in General Recommendation 23, that the surviving and continuing colonial relationship between States and Indigenous peoples and nations is a racist and unlawfully discriminatory one.[48]

41. The following year, in 1966, the UN adopted the International Covenant on Civil and Political Rights ("ICCPR") which the United States has also signed and ratified (but has failed its *erga omnes* obligation to implement).[49] The Covenant again secured civil and political rights including those set forth in the Universal Declaration of Human Rights. Particularly, it acknowledged and secured the fundamental collective right of peoples, specifically colonized peoples, to self-determination and to life, liberty, security, dignity, and equality .[50]

42. The United States also signed, but did not ratify, ICCPR companion human rights treaty, the International Covenant on Economic, Social, and Cultural Rights ("ICESCR") which reasserted the "inherent dignity" and "equal and inalienable rights of all members of the human family"[51] and reaffirmed the rights of all peoples to self-determination and their economic and natural resources specifically referencing the colonial States.[52] It restated among other rights the rights to equality,[53] health,[54] education,[55] and culture.[56] The right of *all* peoples to full self-determination, including "peoples under colonial or other forms of alien domination or foreign occupation," and "to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination" was declared by the United Nations

[47] UNCERD Western Shoshone, para. 7, *id*.
[48] *See also*, Mabo v. Queensland, High Court of Australia, HCA 69; 166 CLR 186 (8 December 1988) (Mabo I) (applying the ICERD in ruling that the denial of the recognition of customary indigenous land rights was racially discriminatory and a violation of the ICERD), *cited* in IACHR, Report No. 75/02, Case No. 11.140. Merits. Mary and Carrie Dann (United States). December 27, 2002 (Dann 2002), para. 58, n. 16. *See also*, Bethany R. Berger, "Red: Racism and the American Indian," 56 U.C.L.A. L. Rev. 591 (2009).
[49] United Nations (General Assembly), *International Covenant on Civil and Political Rights* (1966) (ICCPR), Treaty Series, vol. 999, p. 171 (signed by the United States in 1977 and ratified in 1992).
[50] ICCPR, Arts. 1(1), 1(3), 2(1), 5 (self-determination); Art. (6) (life); Art. 9(1) (liberty, security); Arts. 7 and 10(1) (dignity); Arts. 3, 14(1), 26 and 27 (equality).
[51] United Nations (General Assembly), *International Covenant on Economic, Social, and Cultural Rights* (ICESCR), Treaty Series, vol. 993, p. 3 (1966) (signed by the United States in 1977), preamble pars. 1 and 2.
[52] ICESCR, Art. 1.
[53] ICESCR, Art. 3.
[54] ICESCR, Art. 12.
[55] ICESCR, Art. 13.
[56] ICESCR, Art. 15(1)(a).

World Conference on Human Rights in the Vienna Declaration and Programme of Action in 1993.[57]

43. Under State polices of US exceptionalism and exemptionism, including in this matter (US Response, pages 10-12, note 2, 41, 46 – 49, 59 (Attachment 5), 68), the United States has persistently refused to adopt and implement these and many other human rights treaties and instruments or accept their applicability in attempts to avoid State responsibility for its own human rights violations.

44. US exceptionalism and exemptionism today regarding the fundamental and human rights of indigenous peoples are the progeny of the doctrines of race, cultural, and religious supremacy of imperial Europe that were used to justify the initial invasions, takings, and colonization of the territories of indigenous peoples expressed by the Papal Bulls[58] and the Marshall opinions creating federal Indian law.[59] Despite these attempts to avoid its international human rights responsibilities as a colonial and racially-discriminatory State, it is still bound by fundamental ("inalienable") rights, *jus cogens* norms, and customary international law; and under the Vienna Convention on the Law of Treaties whereby the United States is "obliged to refrain from acts which would violate the object and purpose of a treaty when …it has signed the treaty."[60]

45. Most recently, in 2007, the UN General Assembly issued the Declaration on the Rights of Indigenous Peoples.[61] The United States was one of four successor colonial States of imperial Great Britain as the *only* member States of the UN to vote against the UNDRIP. Later, as the very last holdout of 192 member States, the United States approved it on January 12, 2011, with reservations and a signing statement rendering its approval meaningless, a political stunt by a colonial ruler, in that it declared that the

[57] United Nations (General Assembly), Vienna Declaration and Programme of Action, 5 June 1993, Art. 2, paras. 1 and 2.
[58] *Supra* notes 10, 13.
[59] *See*, Julian Go, "The Provinciality of American Empire: 'Liberal Exceptionalism' and U.S. Colonial Rule, 1898-1912," 49(1) Comparative Studies in Soc. & Hist. 74-108 (2007); Jorge Gonzalez Jacome, "Exceptionalism as a Colonial Tool in Modern International Law," 10 Int. Law: Rev. Colombia Derecho Int. Bogata, 15-42 (November 2007); Jojo Aoah, "American Exceptionalism as a Basis for the American Consciousness," E-International Relations (January 13, 2021), www.e-ir-info/2021/01/13/american-exceptionalism-as-a-basis-for-the-american-consciousness/.
[60] United Nations, *Vienna Convention on the Law of Treaties* ("VCLT"), 1155 U.N.T.S. 331 (May 23, 1969), Art. 18(a); IACHR, Report No. 3/87, Case No. 9647, James Terry Roach (United States), Admissibility, September 22, 1987, paras. 37(b) and 37(c); *"Other treaties" subject to the consultative jurisdiction of the Court (Art. 64 American Convention on Human Rights*). Advisory Opinion OC-1/82. September 24, 1982, paras. 33 and 45 (following Article 32 of the VCLT).
[61] United Nations (General Assembly) *Declaration on the Rights of Indigenous Peoples*, G.A. Decl. 61/295 (September 13, 2007) ("UNDRIP").

United States would interpret the Declaration as aspirational only, non-binding, and consistent with its federal Indian law.[62]

46. The UNDRIP does not establish or state any new rights for indigenous peoples, but instead declares the existing rights of peoples to apply equally to indigenous peoples, "in accordance with the UN Charter." Borrowing from the Charter, it declares that "*indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination*, in the exercise of their rights, in particular that based on their indigenous origin or identity."[63] From the ICERD, the UNDRIP notes that "*all doctrines, policies and practices base on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and social unjust.*"[64]

47. Notably, the UNDRIP expressly acknowledges *indigenous peoples as victims of "colonization and disposition of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance to their own needs and interests.*"[65] It declares that "indigenous peoples have the right to self-determination" by which "they freely determine their political status and freely pursue their economic, social and cultural development."[66] It declares that "indigenous peoples have the *right to the **full enjoyment**, as a collective or as individuals, of all human rights and fundamental freedoms* as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law,"[67] including – "as minimum standards"[68] - the rights to "the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired," to "recognition, observance and enforcement of treaties," to indigenous governance and customary law, to free, prior and informed consent, to an indigenous nationality, to dignity, to indigenous culture and spirituality, to not to be subject to forced assimilation or destruction of their culture, to life and health, and to effective remedies to protect their rights.[69] The claims of

[62] United States, "Announcement of U.S. Support of United Nations Declaration on the Rights of Indigenous Peoples," https://2009-2017.state.gov/documents/organization/154782.pdf.; US Response, note 48, also note 59 (Attachment 5).
[63] UNDRIP, Art. 2, also, preamble paras. 2 and 5 (emphasis supplied); UN Charter, preamble paras. 1, Art. 1(2) (emphasis supplied).
[64] UNDRIP, preamble paras. 4; ICERD, preamble paras. 6 (emphasis supplied).
[65] UNDRIP, preamble paras. 6, also, Arts. 7(2), 8, 10, 14 (emphasis supplied).
[66] UNDRIP, Arts. 3 and 20, also, preamble pars. 16 and 17.
[67] UNDRIP, Art. 1 (emphasis supplied).
[68] UNDRIP, Art. 43.
[69] UNDRIP, art 26, also, 32 (property and resources); Art. 37, also. preamble pars. 7 and 8 (treaties); 4, 18, 20(1), 32, 33, 34, 35 (governance); art 27 (customary law); Arts. 10, 19, 32(2) (free, prior, and informed consent); Arts. 6 and 9, also, Art. 33 (nationality); Art. 15 (dignity); Arts. 11, 12, 13, 16, 24(1), 25, 31, 34 (culture and spirituality); Art. 8(1) (freedom from forced assimilation and culturecide); Art. 7 (life); Arts. 24 and 29 (health); Arts. 8(2), 11(2), 15(2), 20(2), 26(3), 28, 31(2), 38, 40 (effective remedies).

the Onondaga Nation and Haudenosaunee Confederacy herein state violations by the United States of each of these human rights.

48. Organization of American States ("OAS") human rights instruments also define and secure these rights of indigenous nations and peoples of the Americas. The OAS Charter of 1948, signed and ratified by the United States,[70] affirms "international law" as the standard of State conduct, including "the faithful fulfillment [by member States] of obligations derived from treaties and other sources of international law."[71] It endorses "social justice" and proclaims the "fundamental rights of the individual without distinction as to race, nationality, creed, or sex."[72]

49. The 1948 American Declaration of the Rights and Duties of Man ("American Declaration"), with the OAS Charter as the primary instrument controlling this matter, secures among other rights the rights to life, liberty, security, equality, religion and spiritual development, property, heath, education, culture, a juridical personality, and governance.[73]

50. The American Convention on Human Rights ("American Convention") of 1969, signed but not ratified by the United States,[74] elaborates on the OAS Charter, the American Declaration, and the Universal Declaration in securing, among other rights, the rights to a juridical personality, to life, dignity, liberty, security, religion, nationality, property, governance, equal protection, and effective remedies.[75]

51. More specifically, in 2013 the OAS issued the American Convention Against All Forms of Discrimination and Intolerance ("ACADI") declaring that "[e]very human being is equal under the law and has a right to equal protection against any form of discrimination and intolerance in any sphere of life, public or private," and that "[e]very human being has the right to the equal recognition, enjoyment, exercise, and protection, at both the individual *and collective* levels, of all human rights and fundamental freedoms enshrined in …the international instruments applicable to the State Parties."[76] Among

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[70] Signed on April 30, 1948, and ratified by the US Senate on June 15, 1951.
[71] Organization of American States, *Charter of the Organisation of American States* (OAS Charter), 30 April 1948, Arts. 3(a), 3(b).
[72] OAS Charter, Arts. 3(j), 3(l).
[73] Inter-American Commission on Human Rights, *American Declaration of the Rights and Duties of Man*, 2 May 1948, Art. 1 (life); Art. 2 (equality); Art. 3 and preamble paras. 4 and 5 (religion / spirituality); Art. 11 (health), Art. 12 (education); Art. 13 and preamble para. 5 (culture); Art. 17 (juridical personality); Art. 19 (nationality); Art. 20 (governance); Art. 23 (property).
[74] Organization of American States, *American Convention on Human Rights*, 22 November 1969. The United States signed the treaty on June 1, 1977, and pursuant to Article 32 of the VCLT as a signatory must refrain from acts that violate the object and purpose of the treaty. *Supra* note 57.
[75] American Convention, Arts. 3 and 25 (juridical personality); Arts. 4(1) (life); Arts. 5 (degrading treatment); Art. 7(1) (liberty and security); Art. 12 (religion); Art. 20 (nationality); Art. 21 (property); Art. 23 (governance); Art. 24 (equal protection).
[76] Organization of American States, *American Convention Against All Forms of Discrimination and Intolerance* (ACADI), 5 June 2013, Arts. 2 and 3 (emphasis supplied).

other obligations, this Convention requires States to prevent, eliminate and prohibit "[a]ny restriction on the enjoyment of human rights enshrined in applicable international and regional instruments and in the jurisprudence of international and regional human rights courts."[77]

52. The OAS issued a companion treaty, the American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance ("ACARD") recognizing that "the inherent dignity and equality of all members of the human family are basic principles of the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination"[78] It reaffirmed "the resolute commitment of the member states of the Organization of American States to the complete and unconditional eradication of racism, racial discrimination, and all forms of intolerance."[79] It declared that "such discriminatory attitudes are a negation of universal values and the inalienable and infrangible rights of the human person and principles enshrined [in those and other instruments]."[80] It expressly recognized that "the victims of racism, racial discrimination, and other related forms of intolerance in the Americas" include indigenous peoples, and that they may be, individually or *collectivel*y, victims of "multiple or extreme forms of racism" driven by a combination of factors such as race, color, national or ethnic origin, and called for the implementation and enforcement of the ICERD in the Americas.[81] The Convention again declared as protected the rights to equality under the law, to equal protection against racism, racial discrimination, and related forms of intolerance in any sphere of life, public or private, and to "the equal recognition, enjoyment, exercise, and protection, at both the individual and *collective* levels, of all human rights and fundamental freedoms enshrined in their domestic law and international law applicable to the State Parties."[82] It obligated all states to undertake to prevent, eliminate, and prohibit all acts and manifestations of racism and racial discrimination.[83]

53. Three years later, in 2016, the OAS adopted the American Declaration on the Rights of Indigenous Peoples.[84] The Declaration acknowledges the colonization of indigenous peoples: "*indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and the dispossession of their lands, territories and*

[77] ACADI, Art. 4(viii).
[78] Organization of American States, *American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance*, 5 June 2013, preamble paras. 1 and 2.
[79] ACARD, preamble para. 2.
[80] ACARD, preamble para. 2.
[81] ACARD, preamble para. 6, 7, 9, 12 (emphasis supplied).
[82] ACARRD, Arts. 2 and 3.
[83] ACARRD, Art. 4.
[84] Organization of American States, *American Declaration on the Rights of Indigenous Peoples* (ADRIP), 15 June 2016.

resources."[85] It noted "*the importance of eliminating all forms of discrimination that may affect indigenous peoples …and the responsibility of States to combat them.*"[86] It secured, as "minimum standards," the rights of indigenous peoples to self-determination, to the individual and *collective* full enjoyment of all human rights and fundamental freedoms recognized by OAS and UN human rights instruments and international law, to nationality, juridical personality, governance, customary law, property, culture, integrity, spirituality, health, survival as indigenous peoples, freedom from racism, and effective remedies.[87] The United States has neither signed nor ratified the ACADI, the ACARD, or the ADRIP.

54. The United States and the other colonial States concocted an interpretation of the collective human right to self-determination, known as the "Blue Water" or "Salt Water" thesis, as a geographical excuse from their *erga omnes* decolonization obligation as to any nation or peoples found within their claimed colonial boundaries.[88] UN Resolution 1541 (1960), for example, included "geographical distinctness" as a factor in determining whether or not a peoples fell within the scope of a State's obligation under Article 73(5) of the UN Charter information on the conditions of a colonized peoples.[89] This is reflected in their invocation of the right of nations to threats indigenous full self-determination poses to their "territorial integrity" in every decolonization instrument.[90] It effectively relegates Indigenous nations and peoples to autonomy and a lesser right of self-determination than that of other peoples.

55. However, this self-serving concocted contention has no basis in law, history, or fact. It is the United States, its colonial predecessors, and other colonial powers that, by definition, invaded, violated, and, as colonial rulers and occupiers, continue to violate the territorial integrity of the acknowledged first nations and peoples of the Americas, including that of the Onondaga Nation and the Haudenosaunee Confederacy. Such

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[85] ADRIP, preamble para. 5 (emphasis supplied).
[86] ADRIP, preamble para. 13 (emphasis supplied).
[87] ADRIP, Arts. 3 (self-determination), 5 (all fundamental and human rights), 6 (collective rights), 8 (nationality and culture), 9 (juridical personality), 10, 13 – 18, 25, 28 (culture and cultural identity and integrity), 10 and 11 (against ethnocide and genocide), 12 (freedom from racism), 16 (spirituality), 18 and 19 (health), 19, 25 (property and resources), 21 and 23 (governance), 22 (customary law), 33 and 34 (effective remedies).
[88] Bruce Robbins, "Blue Water: A Thesis," Rev. of Int'l Amer. Studies 8(1), summer 2015; Chidi Oguamanam, "Protecting indigenous knowledge in international law: solidarity beyond the nation-state," *Law Text Culture*, vol. 8 (2004), pp. 196-197; Sheryl Lightfoot, David MacDonald, "The UN as Both Foe and Friend to Indigenous Peoples and Self-Determination," in Jakob R. Avgustin, "The United Nations: Friend or Foe of Self-Determination?," E-Int'l Relations (2020), at pp. 32-46.
[89] United Nations (General Assembly), *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter*, 15 December 1960, A/RES/1541(XV), Annex, Principle V. The United States was a member of the Special Committee of Six (States) that drafted the Resolution which it then voted against despite the Salt Water thesis exclusion. UN Doc. A/4526, 3 October 1960.
[90] *See*, UNGA Res. 1514, proclamation para. 6; UNGA Res. 1541; Annex, Principle IV; UNDRIP, Art. 46; ADRIP, Art. 4, Vienna Declaration, Art. 2, para. 3.

purported colonial exclusions from State er*ga omnes* obligations violate not only fundamental / inalienable and human rights but also directly conflict with the UN and OAS Charter provisions on equality of *all* peoples and nations and on the territorial integrity of *all* nations (including the indigenous, first, nations and peoples of the Americas like the Onondaga Nation and Haudenosaunee Confederacy) in status and human rights under international law.

56. Article 103 of the UN Charter specifically provides for the supremacy of the Charter over any conflict of State obligations under any other international agreement. Even UN Ambassador Eleanor Roosevelt remarked at the time of the 1952 UN Resolution on the right of self-determination and colonized peoples: "If a right is valid for one group of peoples, it is equally valid for all peoples."[91]

57. This exclusionary thesis concocted by continuing colonial States is expressly directed at original, first, nations and peoples found within the States' claimed boundaries, and, as such, is a racist doctrine that denies and limits the rights of "Indian" and other Indigenous nations and peoples to self-determination and their own territorial integrity (and their attendant fundamental and human rights). Colonial States should not and cannot benefit from their unlawful acts to avoid their responsibilities under international law.[92]

58. Colonialism, and racism, in *any* "form or manifestation" by their very definitions violate the fundamental ("inalienable") rights to life (i.e., genocide, ethnocide, right to collective existence)[93], liberty (i.e., freedom from alien domination or rule)[94], security (i.e., freedom from territorial invasion, theft of lands and resources, alien rule)[95], dignity (i.e., denial of sovereignty and nationality, culturecide)[96], and equality (expressed collectively)[97] of nations and peoples[98], to "complete freedom of peoples"[99], "the exercise of their sovereignty"[100], and "the integrity of their national territory"[101].

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[91] United Nations (General Assembly), Record, 7th Sess., 16 December 1952, para. 151.
[92] *See*, Catherine J. Iorns, "Indigenous Peoples and Self-Determination: Challenging State Sovereignty," 24 Case Western Reserve J. of Int. L. 199-348 (1992), 255-256, n. 264.
[93] *Universal Declaration of Human Rights* (UDHR), GA Res. 217A(III), UNGAOR, 3rd Sess., Supp. No. 13, UN Doc. A/810 (1948)71, Art. 3; *ICCPR*, Art. 6(1).
[94] UDHR, Art. 3; UNGA Res. 1514, preamble, para. 11 ("complete freedom"); ICCPR, preamble paras. 3, Art. 9(1).
[95] UDHR, Art. 3; ICERD, Art. 5(b); ICCPR, preamble paras. 1 and 2 (the "inalienable rights of all members of the human family" "derive from the inherent dignity of the human person), Art. 9(1).
[96] UDHR, Arts. 5 and 6; ACARD, Preamble paras. 1 and 2 (affirm same in UDHR, the American Declaration, American Convention, and the ICERD); ICERD, preamble paras. 1-2; ICCPR, Arts. 7 and 10; ICESCR, Preamble paras. 1 and 2.
[97] UDHR, Arts. 1, 2, and 7; ICERD, preamble paras. 1-3, Art. 5(a); ICCPR, Arts. 3, 14(1), and 26.
[98] UN Charter, Preamble, para. 1 Art. 1(2); UNGA Res. 1514, preamble, paras. 1.
[99] UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.
[100] UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.
[101] UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.

59. Colonialism is itself a violation of the fundament rights of self-determination[102] and of peoples to be free of subjection to alien subjugation, domination, or exploitation,[103] and of racial or ethnic discrimination in any form or manifestation[104]. By virtue of the fundamental right of peoples to self-determination, "they freely determine their political status and freely pursue their economic, social and cultural development."[105]

60. From these fundamental rights are derived the collective rights of indigenous peoples and nations to a juridical personality[106], an indigenous nationality[107], territory (collective property)[108], free, prior and informed consent as to all matters that affect them, customary governance and laws[109], natural resources[110], culture and religion[111] and an indigenous education[112], economic security[113], health (clean environment)[114], effective remedy for acts violating fundamental rights[115], etc.

61. Those fundamental rights and their derivative rights are reasserted in varying forms in the OAS Charter, the American Declaration, the American Convention, the ACADI, the ACARD, the ADRIP, and UN human rights instruments, including the UN Charter, the UDHR, the ICERD, the ICCPR, the ICESCR, the UN DRIP, and UNGA Resolution 1514. Colonialism violates each of the aforesaid rights. These fundamental and derivative rights are implicated in the claims of the Onondaga Nation and the Confederacy asserting primary violations under the American Declaration of their rights to property (Article XXIII, Petition paragraphs 142-150), equality (Article II, Petition paragraphs 151-159), and to Judicial Protection and Due Process (and Effective Remedy) (Article XVIII, Petition paragraphs 160-181).

62. As declared in the Vienna Declaration and recalled in the American Declaration on the Rights of Indigenous Peoples, human rights do not stand alone but are universal, inseparable, and interdependent under international law.[116] For example, the

[102] Vienna Declaration, Art. 2, paras. 1 and 2; UNGA Res. 1514, preamble para. 2, Art. 2; ICCPR, Art. 1; UN Charter, Art. 1(2).
[103] UNGA Res. 1514, preamble para. 1, Art. 1; ICERD, preamble paras. 4.
[104] ICERD, preamble pars. 5-13, Arts. 1-7.
[105] ICCPR, Art. 2; UNGA Res. 1514, Art. 2.
[106] ICCPR, Art. 16.
[107] UDHR, Art. 15, 21; ICERD, Art. 5(d)(iii).
[108] UDHR, Art. 17; ICERD, Art. 5(d)(v).
[109] UDHR, Art. 21; ICERD, Art. 5(c); ICCPR, Art. 25.
[110] UNGA Res. 1514, paras. 8; UN General Assembly, Permanent sovereignty over natural resources, 14 December 1962, A/RES/1803(XVII).
[111] UDHR, Art. 27; ICERD, Art. 5(e)(vi); ICCPR, Art. 18.
[112] UDHR, Art. 26; ICERD, Art. 5(e)(v).
[113] UNGA Res. 1514, preamble, para. 8.
[114] UDHR, Art. 25, ICERD, Arts. 5(a) and (e)(iv).
[115] UDHR, Arts. 8 and 10; ICERD, Art. 6; ICCPR, Art. 2(3).
[116] Vienna Declaration, Art. 5; ADRIP, preamble para. 11.

"legacies of colonialism" have been recently recognized by UN Human Rights Council as having negative impacts on the enjoyment of human rights.[117]

63. The loss and subsequent exploitation and contamination of treaty secured "property," the first cited American Declaration violation, is based upon the failure of the United States to honor its treaty obligations and protect the Petitioners from takings by its subdivision, New York state, and the invasion and settlement of their territory by the non-Onondaga / non-indigenous citizens of the United States. See, Paragraphs 15-20 above. The loss of property (the lands, natural resources, and territory of a sovereign nation) by its nature results in and implicates violations of many fundamental and human rights including the rights to territorial integrity from the ownership claim of the United States and the state of New York and the invasion of their lands by settlers and private industries, the right to liberty from being deprived of access to their territory, lands, and resources, the right to self-determination (sovereignty) from the taking and invasion of their territory by another nation, the right to security from the loss of the lands and resources for their economic and physical well-being, the rights to religion / spirituality and to liberty from the separation of the Onondaga and Haudenosaunee from their sacred lands and ancestors, the right to health from the loss of their access to traditional medicines and ceremony and to a clean environment from the toxic contamination of their treaty lands, the right to culture from the taking's interference with the practice of their culture and spirituality and the implementation of their customary laws, the rights to culture and education from the overwhelming invasion of their territory and lands by European settlers and the takings as part of a United States policy of forced assimilation, culturecide, and ethnocide, and so on. See, Paragraphs 21 and 22 above.

64. The Petitioners' third claim of a violation of the American Declaration, the rights to judicial protection and due process, is found in the persistent and protracted US violations of treaty obligations and the failure of the legal system of the United States to afford the Onondaga Nation and Haudenosaunee Confederacy an effective remedy for the taking of their property. This violation of the American Declaration resulted in continuing aforesaid violations of the right to property as well as the rights to a juridical personality, to an international personality and recognition and enforcement of their treaty rights, to an indigenous nationality, to the recognition and enforcement of Onondaga and Haudenosaunee customary law, and to the right of fee, prior and informed consent.

65. The remaining cited American Declaration violation, the right to equality, is the fundamental and human rights violation that underlies the other two listed violations as they are manifestations of colonial domination and racial discrimination based on the

[117] United Nations (Human Rights Council), *Negative impact of the legacies of colonialism on the enjoyment of human rights*, 8 October 2021, A/HRC/RES/48/7.

sole fact that the Onondaga and the Haudenosaunee are "Indians," indigenous nations and peoples.

66. The Commission may *iura novit curia* consider and find violations of any of the many other rights described above in addition to those cited by the Petitioners. As the Commission recently remarked: "The Inter-American Commission's Rules of Procedure do not require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the IACHR, based on the Inter-American system's jurisprudence, to determine in its admissibility report which provisions of the relevant instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements."[118] Respectfully, Petitioners request that the Commission exercise this authority and admit on the merits any and all other violations of the American Declaration that it may find upon the facts presented to it by the Petitioners.

67. In rejecting the "fundamental / inalienable right" of indigenous nations and peoples to self-determination and governance, the State's high court remarked that the United States "in the exercise of its plenary power of Indian affairs, may restrict the retained sovereign powers of the Indian tribes."[119] Even that Court has acknowledged: "It is settled that the unique status of Indian tribes under federal law permits the Federal Government to enact legislation singling out tribal Indians, legislation that might otherwise be constitutionally offensive."[120]

68. The United States is a persistent outlier in the acknowledgement and respect of human rights and compliance with its *erga omnes* obligations. Over the past 60+ years, the United States is the *only* State out of some 180 voting UN member States which has voted against *all* of the hundreds of decolonization instruments adopted by the UN General Assembly.[121]

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[118] IACHR, Report No. 173/018, Petition No. 1312-10, Nelson Mendoza (United States), Admissibility, December 23, 2018, para. 21; IACHR, Report No. 21/16, Petition No. 419-08, Khaled El-Masri (United States), Admissibility, April 15, 2016, paras. 36 and 38; IACHR, Report No. 24/15, Petition No. 1752-09, Bernardo Aban Tercero (United States), Admissibility, June 24, 2015, para. 31; IACHR, Report No. 80/13, Petition No. 1278-13, Robert Gene Garza (United States), Admissibility, September 16, 2013, para. 27. *See also*, I/A Court of H.R., Case of the Saramaka People v. Suriname (Saramaka), Preliminary Objections, Merits, Reparations and Costs. Judgment. 28 November 2007, paras. 25-29, 160, 161.

[119] Washington v. Confederated Bands and Tribes of Yakima Indian Nation, 439 U.S. 463, 501 (1979).

[120] Yakima Indian Nation, 439 U.S. at 500-01.

[121] The UN General Assembly condemned colonialism and has made calls for decolonization every year since UNGA Resolution 1514 in 1960, approximately 150 times over 63 years. Each year the member States of the General Assembly with near unanimity have endorsed the call while the United States stands alone as the only State to have voted against every single one. The great global call to immediately end and eradicate all forms and manifestations of colonialism and racism threatens the continuing colonial rule, domination, and exploitation by the United States over the Onondaga Nation and the Haudenosaunee Confederacy and other indigenous peoples and nations. *See*, UNGA decolonization resolutions for the following sessions (United Nations Digital Library, "Voting Data" word search – "colonial").

69. It is the application of colonial, racist, constitutionally offensive, federal Indian law, and the violation of the fundamental rights of the Onondaga Nation and the Haudenosaunee Confederacy, that form the basis for the claims against the United States asserted herein.

II. THE CHARTER WITH THE AMERICAN DECLARATION CREATES BINDING HUMAN RIGHTS OBLIGATIONS UPON THE UNITED STATES

70. As with treaties it has made with other nations, including indigenous nations, the construction of the OAS Charter is a matter of international law and not the self-serving domestic law of one party to the treaty. "The Commission has previously stated that with all international obligations, a State's human rights obligations are superior to the requirements of domestic law and must be performed in good faith. Accordingly, states cannot invoke their contrary domestic law as an excuse for non-compliance with international law."[122] The self-serving domestic law of the United States does not bind the Commission, nor is it relevant except to the extent, as here, where it is itself evidence of the State's continuing violations of the Petitioners' human rights.

66. As an international body interpreting a treaty, the Commission resorts "to traditional international law methods, relying both on general and supplementary rules of interpretation, which find expression in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT)."[123] "The American Declaration should be interpreted according to the canons of the [VCLT] because the Convention represents a world-wide consensus[124] on how international instruments should be construed. …Articles 31 and 32 of the Vienna Convention set out the principal interpretative norms for treaties and other international instruments. As the Commission opined in Roach, according to Article 31 of the Vienna Convention, the terms of the American Declaration should be interpreted in accordance with their ordinary meaning and in light of the object and purpose of the instrument."

> Article 31 of the Vienna Convention also looks to "relevant rules of international law" to help interpret treaties. Therefore, the Commission should take into account the customary international law norm …. Pursuant

[122] IACHR, Report No. 118/19, Petition 2282-12, Jose Padilla and Estella Lebron (United States), Admissibility, June 10, 2019, para. 27.
[123] VCLT, Arts. 5, 31, 32; I/A Court H.R., Advisory Opinion OC-OC-1/82 "'Other treaties' subject to the consultative jurisdiction of the Court," 24 September 1982, para. 33.
[124] The VCLT has been acknowledged as a codification of the customary international law of treaties. *See*, Gabcikovo-Nagymaros Project, Hungary v. Slovakia, Judgment, Merits, ICJ GL No. 92, [1997] ICJ Rep. 7, [1997] ICJ Rep. 88, (1988) 37 ILM 162, ICGJ 66 (ICJ 1997), 25 September 1997, International Court of Justice [ICJ].

> to Article 38(1)(b) of the Statute of the International Court of Justice, "international custom, as evidence of a general practice accepted as law" is one of the sources of international law. Treaties are clearly evidence of State practice, especially if accompanied by opinio juris, or claims in the treaty or the travaux *préparatoires* indicating that a treaty provision is a restatement of pre-existing customary laws.[125]

67. Much of the State's argument is premised on a static interpretation of the Charter and the Declaration such as in the interpretation of the application and scope of the Declaration's rights when extended to indigenous peoples.

> The U.S. Government is incorrect in asserting that the rights in the Declaration "must be interpreted in terms of the intentions of the member states at the time of the adoption of the Declaration, not in terms of changing norms of customary international law." This rigid and static approach to the interpretation of the Declaration is in conflict with the terms of the Declaration, the norms of the Vienna Convention, the normal approach which international bodies take to human rights instruments, the practice of the Commission, and the practice of the United States in its own domestic cases. The preamble to the American Declaration states, "The international protection of the rights of man should be the principal guide of an *evolving* American law.[126]

> That is why the Court finds it necessary to point out that to determine the legal status of the American Declaration it is appropriate to look to the inter-American system of today in the light of the evolution it has undergone since the adoption of the Declaration, rather than to examine the normative value and significance which that instrument was believed to have had in 1948.[127]

68. Turning to the Charter and the Declaration,

> Article 111 of the Charter specifies that the "structure, competence and procedure" of the Commission shall be that set forth in the American Convention. Article 1 of the Commission's Statute, reflecting Charter Article 111, sets forth the responsibility of the Commission to promote and protect human rights. For states not parties to the American Convention, the human

[125] Roach, para. 37, *supra* note 60.
[126] Roach, para. 37, *supra* note 60 (emphasis by the Commission).
[127] I/A Court H.R., Advisory Opinion OC-10/89 "Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights," 14 July 1989, para. 37.

> rights to be protected are specified to be those contained in the American Declaration. The Declaration is a source of international obligation for the member states who have not ratified the Convention.[128]

And,

> [T]he Member States have signaled their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter. Thus, the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration.[129]

69. Where the American Convention has not entered into force, as here, Article 150 of the Charter assigns the human rights enforcement responsibility to the Commission, "the present Inter-American Commission on Human Rights shall keep vigilance over the observation of human rights."[130] For the member states, the Declaration is the text that defines the human rights referred to in the Charter. The two instruments are interlinked into one treaty. Article 1 of the Commission's Statute describes the Commission as an organ of the OAS "created to promote the observance and defense of human rights." The OAS General Assembly has repeatedly recognized the American Declaration as a source of international obligation for the member states.[131] The State's "non-binding" argument defeats the clear intent and purpose of the Declaration.

70. Interpreting the treaty, the Charter, the Inter-American Court unanimously declared,[132] and the Commission has uniformly ruled, that the Declaration creates State responsibilities to comply with the human rights obligations set forth within the Declaration.

> According to the long-standing practice and jurisprudence of the Inter-American human rights system, the American Declaration of the Rights and Duties of Man is a source of international obligations for the United States and for the other member states of the OAS that are not parties to the American Convention on Human Rights. It is understood that these obligations derive from the commitments assumed by the member states in

[128] IACHR, Report No. 14/94, Case 10.951. Callistus Bernard, et al. (United States), Admissibility, February 7, 1994, p. 9 (para. 4).
[129] I/A Court H.R., Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Assoc. v. Argentina, Merits, reparations and costs, Judgment of February 6, 2020. Series C No. 400, n. 183.
[130] *See also*, American Convention, Art. 29(d), preserving the role and full authority of the American Declaration.
[131] Interpretation of the American Declaration, para. 42.
[132] Interpretation of the American Declaration, paras. 35-47.

> the area of human rights in the OAS Charter, that the member states agreed to be contained and defined in the American Declaration, and from the customary legal nature of the rights protected in the basic provisions of the Declaration, for which the Commission is empowered by Articles 18 and 20 of its Statute to receive and evaluate allegations of noncompliance with these commitments by the States. Therefore, it is pertinent to characterize the non-compliance by a member State of the guarantees of the rights enshrined in the American Declaration as a violation of the obligations imposed on it by international human rights law, with which the Commission rejects the State's assertion that the American Declaration does not create legal obligations for the OAS member States.[133]

71. The State's impunity argument would have the Commission turn a blind eye and its back to the OAS and its Charter, to its essential responsibility, and authority in the defense of human rights. The right of "access to justice" includes the right to access justice before international tribunals particularly where domestic law provides no adequate and effective remedy to victims of human rights violations.[134] The United States must be held accountable under the Charter and Declaration for its conduct in this matter.

III. RECONSIDERATION OF PLAINTIFFS' CLAIMS RELATED TO THE LOSS OF PROPERTY

Petitioners Assert *Continuing Violations* of Their Right to Property, Continuing Violations Are Within the Commission's Competence *Ratione Temporis*

72. As previously noted, the Commission in its ruling on admissibility denied the admissibility of the Petitioners' Article XXIII (right to property) claim on the basis of *ratione temporis*. While finding that the Petition stated sufficient facts to demonstrate the misappropriation of the Petitioners' property, the Commission ruled that it did not have competence to hear the violation where the misappropriation took place between 1788 and 1822.[135]

73. The United States in its challenge to admissibility of the Petitioners first claim on their right to property contended that the Commission lacked competence to hear the claim under the doctrine of *ratione temporis* purportedly because the Onondaga Nation's

[133] IACHR, Report No. 228/22, Petition 2096-17, Mohammed Jawad (United States. Admissibility. August 27, 2022, para. 15; Padilla, para. 26, *supra* note 122.
[134] *See*, I/A Court H.R., Serrano-Cruz v. El Salvador, Judgment of November 23, 2004, Ser. C No. 118, para. 40.
[135] IACHR, Report No. 51/23, Petition No. 624-14, The Onondaga Nation (United States), Admissibility, May 12, 2023, at paras. 41-42.

loss of land occurred between 1788 and 1822, prior to the adoption of the American Declaration, and renders the Petitioners' claims subject to the principle that international instruments cannot be applied retroactively. As authority for its position, the United States relies on the Commission's decision in Isamu Carlos Shibayama et al. v. United States.[136] Admission Response, p. 9. The Shibayama petitioners' claims arose from their being excluded as non-US citizens from compensation under 1988 legislation for their internment as persons of Japanese ancestry by the United States in 1944 during the Second World War, prior to the 1951 US ratification of the American Declaration. The Commission did not need to reach the retroactive application of the Declaration as it held that the non-citizenship exclusion from compensation in the 1988 legislation stated a *prima facie* violation of the Declaration.[137]

74. Petitioners' here have alleged similar denials of their attempts to obtain relief after 1951 pursuant to U.S. Supreme Court rulings (Petition, para. 92), nation-to-nation negotiations (Petition, paras. 92-97), and domestic judicial remedies which were not completed until October 15, 2013 (Petition, paras. 98-125). That said, as discussed above and as contained in the Petition, the losses by the Onondaga Nation and the Haudenosaunee Confederacy, peoples, and people of their territory, land, and resources from colonial takings and domination by the United States set forth continuing violations, injuries, and harm. For example, their ability to exercise sovereignty over their territory and lands, their ability to exercise their self-determination and governance over their territory, lands, and resources, their ability to benefit from their lands and resources economically, culturally, physically (health), and spiritually, the continuing occupation of their lands and territory by the United States and non-Onondaga, the continuing toxic contamination of their lands, territory, environment - and bodies - by or under the authorization of the United States, and their ability to be free of racism and ethnic discrimination and colonial domination and rule, are all continuing violations and harms.

75. As the late Professor Patrick Wolfe opined in his seminal essay, "Settler Colonialism and the Elimination of the Native," colonialism is not an "event," it is a structure.[138] In other words, the policies, programs, and acts of a colonial state, like the United States, and its institutions regarding colonized peoples are structurally and

[136] IACHR, Report No. 26/06, Petition No. 434-03, Isamu Carlos Shibayama et al. (United States), Admissibility, March 16, 2006.
[137] Shibayama, para. 42, *id.* In a subsequent case with similar facts, the Commission noted the United State's misrepresentation of the holding in Shibayama on competence *ratione temporis*. IACHR, Report No. 77/22, Petition 1561-13, Zaida Torres and Others (United States). Admissibility. 5 April 2022, para. 46.
[138] Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," 8(4) J. of Genocide Res. 387-409 (December 2006), 388; *see also*, J. Kehaulani Kauanui, "'A Structure, Not an Event': Settler Colonialism and Enduring Indigeneity," 5.1 Emergent Crit. Analytics for Alt. Humanities (Spring 2016) (noting the continuing nature of the colonization of indigenous peoples), www.csalateral.org/issue/5-1/forum-alt-humanties-settler-colonialism-enduring-indigeneity-kauanui/.

institutionally infused with continuing colonial domination and racial / ethnic discrimination. That is readily seen within the context of the "federal Indian law" of the United States[139] discussed above and in the denial and limitations on effective remedies that domestic colonial law made and makes available to the Onondaga Nation and the Haudenosaunee Confederacy and their peoples. Petition, paras. 98-125. Petitioners' claims have continued through the date of the 1951 US ratification of the American Declaration to the present day.

76. Like Shibuyama, in the Zaida Torres case cited in the Response, the Commission considered claims arising out of the United States taking between 1941 and 1947 of most of the Puerto Rican island of Vieques for military purposes during the Second World War.[140] The military use and contamination of the island continued until 2003 and – like the Onondaga (Petition, paragraphs 53-75) - impacted the health of the island's residents, including the Petitioners, throughout that period.[141] The Commission ruled that it did have jurisdiction *ratione temporis*.

77. The United States raised an untimely *ratione temporis* objection in the case of Mary and Carrie Dann v. United States regarding the denial in the 1970s of the use by Western Shoshone people of treaty lands taken by the United States in 1872 in violation of an 1863 treaty.[142] As here, the Danns asserted among others violations (culture, self-determination) of their derivative right to property as Western Shoshone, the right to equality, and the rights to juridical protection and due process of law.[143] The Commission noted that the pre-1951 domestic tribunal (the Indian Claims Commission) decision which ratified the takings "applied to and had effects upon the Petitioners well after the United States' ratification of the OAS Charter in 1951, and indeed ***continue to do so***, and consequently the State properly remains responsible for the effects of that application [by the tribunal] upon the petitioners to the extent they are inconsistent with the petitioners' rights under the American Declaration."[144] The Commission rejected the State's *ratione temporis* argument:

> As for the alleged impermissible inter-temporal application of law, the State's submissions in this regard rely upon the mistaken premise that the Commission is addressing a "previously existing situation" in evaluating the Danns' complaint. While it may be the case that the ICC process itself took

[139] *See*, Natsu Taylor Saito, SETTLER COLONIALISM, RACE, AND THE LAW, WHY STRUCTURAL RACISM PERSISTS (2020).
[140] Torres, para. 46, *supra* note 137.
[141] Torres, paras. 2-21, *supra* note 137.
[142] Dann (2002), paras. 2, 3, 39-42, 166, 167, *supra* note 3.
[143] Dann (2002), paras. 44-75, *supra* note 3.
[144] Dann (2002), para. 166 (emphasis supplied), *supra* note 3.

> place more than 30 years ago, *the Petitioners' complaints concerning indigenous title to the property, including alleged improprieties in the ICC process, remained the subject of controversy and continued to effect the Petitioners' interests at the time their petition was lodged and continue to do so*.[145]

Like the situation in Dann, the Onondaga Nation and Haudenosaunee Confederacy and their people continue, after 1951, to suffer the effects of the violations of their Treaty and the takings and contaminations of their territory, lands, and resources.

78. The Commission again addressed this issue regarding the rights of indigenous peoples in the 2013 merits decision in Kalina and Lokono Peoples v. Suriname.[146] In that case, the indigenous peoples asserted their collective rights to property, judicial personality, and judicial protection in failure of the State to recognize their judicial personality in its domestic laws its denial of the ability of the indigenous peoples to protect their property rights and their ancestral lands including from land titles and licenses issued to non-indigenous settlers and extractive industries prior to Suriname's ratification of the American Declaration in 1987.[147] Upon those facts, on the issue of *ratione temporis* the Commission affirmed its previous admissibility decision that it had jurisdiction over the alleged violations by the State "insofar as these events may be of a continuing nature."[148] The Commission opined on this issue:

> [T]he Inter-American Court and the IACHR have consistently applied the international law principle that a State is generally not liable for acts or omissions that were consummated prior to its ratification of a treaty. However, it is also a principle of international law that if prior acts, or the effects of such prior acts or omissions, continue after the date of a State's ratification of or accession to the relevant treaty, the State can be internationally liable for violating that treaty. Thus, *if the effects of Suriname's issuance of land titles, the establishment of the Nature Reserves, and the granting of the mining concession before November 12, 1987 (the date of Suriname's accession to the American Convention) on the rights of*

[145] Dann (2002), par. 167 (emphasis supplied), *supra* note 3.
[146] IACHR, Report No. 79/13, Case No. 12.639, The Kalina and Lokono Peoples (Suriname), Merits, July 18, 2013, paras. 72-76.
[147] Kalina, para. 2, 71, *id*.
[148] Kalina, para. 72, *id.* (*citing* IACHR Report No. 76/07, The Kalina and Lokono Peoples (Suriname), Admissibility, October 15, 2007, para. 48).

the Kaliña and Lokono Peoples continued after that date, Suriname can be held liable for the effects caused by those acts after November 12, 1987.[149]

79. Similarly, the Onondaga Nation and the Haudenosaunee Confederacy have alleged post-Declaration continuing impacts from pre-Declaration-ratification land takings (analogous to the issuance of land titles and the establishment of Nature Reserves in Kalina) and the licensing of industries that contaminated Onondaga lands (analogous to the granting of mining concessions in Kalina) for which the United States "can be held liable for the effects caused by those acts after [the State's ratification of the Declaration]" which, here, was on June 19, 1951.

80. Specifically, the Commission in Kalina cited to the effects of State pre-Declaration claims of State land ownership, issuance of "long-term leases or land titles" to land ownership issued to non-Kalina/Lokono, as well as its licensing of extractive industry on ancestral lands, that continued after the ratification date as long as they continued to be in effect ("revoked or otherwise left without effect") and the indigenous peoples from exercising legal title over them.[150]

81. Here the negative effects of the takings and contamination of Onondaga and Haudenosaunee territory, lands, and resources, and their exclusion from their territory and the benefits of their lands and resources, continue and will continue until they are returned, or some other effective remedy is reached. As the Commission concluded in Kalina:

> Accordingly, the IACHR considers that the issuance of individual land titles, leaseholds and long-term leases to non-indigenous persons, the establishment and administration of the Nature Reserves, and the granting of the mining concession, as well as their effects, have continued after Suriname's accession to the Convention, and continue to the present. Therefore, the IACHR has jurisdiction *ratione temporis*, and Suriname can be held liable for violations of the [treaty] if the effects of these acts and omissions infringe upon the Kaliña and Lokono's rights.[151]

82. Contrary to the authority cited by the United States (Response, p. 9, n. 37), neither the events (the takings, contaminations, colonial rule) nor the effects of such events "ceased to exist" prior to 1951.[152] Therefore, the effects of the Treaty violations,

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[149] Kalina, para. 74 (emphasis supplied), *id*.
[150] Kalina, para. 75, *id*.
[151] Kalina, para. 76, *id*. (applying the principle to the American Convention).
[152] The United States cites to the case of I/A Court H.R., Alfonso Martin Del Campo Dodd, Mexico, Preliminary Objections, Judgment of 3 September 2004, Ser. C. No. 133, para. 85. That case involved claims from some

takings, and contamination of Onondaga and Haudenosaunee territory, lands, and resources are continuing and United States can and should be held liable for its violations of their rights secured by the American Declaration.

IV. GENERAL PRINCIPLES OF LAW RE PETITIONERS' CLAIMS

A. The Commission Properly Employs Relevant International Instruments, and Relevant Case Law in Interpreting the American Declaration

83. The Commission is mandated by its Statute to examine claims alleging the violation of a right protected under the Declaration. The fact that the resolution of such a claim may require reference to another treaty is no bar to jurisdiction.[153]

> According to the jurisprudence of the inter-American human rights system, the provisions of its governing instruments, including the American Declaration, should be interpreted and applied in an evolutionary manner; taking into account evolving international standards, instruments and jurisprudence that have occurred since these instruments were first adopted.
>
> In particular, the organs of the inter-American system have previously held that developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration may be drawn from the provisions of other prevailing international and regional human rights instruments. This includes the American Convention on Human Rights, which, in many instances, may be considered to represent an authoritative expression of the fundamental principles set forth in the American Declaration. Pertinent developments have also been drawn from the provisions of other multilateral treaties and instruments adopted inside and outside of the framework of the inter-American system, including the International Covenant on Civil and Political Rights.[154]

84. Article 31 of the Vienna Convention provides that the interpretation of a treaty shall take into account "any relevant rules of international law applicable in the

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allegedly arrested, tortured, and held for murder prior to the ratification of the American Convention by Mexico. As the claims and injuries all occurred and the violations "ceased to exist" prior to ratification, the Commission applied the *ratione temporis* to those claims. The facts of that case are clearly distinguishable from those asserted by Petitioners here. Neither the violations here or their effects "ceased to exist" before the date of the entry into force of the American Declaration or OAS Charter with respect to the United States. VCLT, art. 28.

[153] IACHR, Report 103/20, Case 417-12, Thahe Mohammed (United States), April 24, 2020, paras. 16 and 17.

[154] IACHR, Report 79/07, Case 12.513, Prince Pinder (The Bahamas), October 15, 2007, para. 22.

relation between the parties." Under the principle of *lex specialis*, it is useful and appropriate for the Commission to interpret the scope of rights within the American Declaration as they pertain to indigenous peoples by consulting the UNDRIP and the ADRIP and other instruments and international law specifically addressing the rights of indigenous peoples, including collective rights.[155] As the Commission stated in the Western Shoshone Dann case on this question:

> [I]n addressing complaints of violations of the American Declaration it is necessary for the Commission to consider those complaints in the *context* of the evolving rules and principles of human rights law in the Americas and in the international community more broadly, as reflected in treaties, custom and other sources of international law. Consistent with this approach, in determining the claims currently before it, the Commission considers that this broader corpus of international law includes the developing norms and principles governing the human rights of indigenous peoples. … In particular, a review of pertinent treaties, legislation and jurisprudence reveals the development over more than 80 years of particular human rights norms and principles applicable to the circumstances and treatment of indigenous peoples. Central to these norms and principles is a recognition that ensuring the full and effective enjoyment of human rights by indigenous peoples requires consideration of their particular historical, cultural, social and economic situation and experience. [156]
>
> [T]he American Declaration, as an embodiment of existing and evolving human rights obligations of member states under the OAS Charter, is not to be interpreted and applied as the law that existed at the time of the Declaration's adoption but rather in light of ongoing developments in the rights protected under those instruments. Consequently, it is appropriate to evaluate the Petitioners' complaints in light of developments in the corpus of international human rights law more broadly since the American Declaration was first composed. To the extent that the Danns remain the victims of an on-going violation of their rights under Articles II and XXIII of the Declaration, then, the State is obliged to resolve the situation in light of its contemporary obligations under international human rights law and not those

[155] *See*, Dann (2002), para. 167, *supra* note 3; IACHR, Report No. 121/18, Case 10.573, Jose Isabel Salas Galindo and Others (United States), Admissibility, October 5, 2018, para. 417; *also*, IACHR, Report 44/15, Case 12.728, Xucuru Indigenous People (Brazil), Merits, July 28, 2015, para. 78 (consulting the UNCERD General Recommendation 23 on Indigenous Peoples).
[156] Dann (2002), 124, *supra* note 3.

applicable at the time when the ICC process took place, to the extent that the law may have evolved.[157]

85. The Petition in this matter, for example, at Paragraph 138, cites to the rules in the Dann case that the American Convention as "represent[ing] an authoritative expression of the fundamental principles set forth in the American Declaration" and the rule described above that "the Declaration must be *interpreted and applied in the context* of the international and inter-American human rights systems more broadly, in the light of developments in the field of international human rights law since the Declaration was first composed and with due regard to other relevant rules of international law." Paragraph 139 states: "In particular," the Commission has noted, "the organs of the inter-American system have previously held that developments in the corpus of international human rights law relevant to interpreting and applying the American Declaration may be drawn from the provisions of other prevailing international and regional human rights instruments."[158]

86. Petition Paragraphs 142 through 145 use the American Convention's case discussion of the right to property as it relates to indigenous peoples to interpret the application of that right to indigenous peoples under the declaration, as seen in Paragraph 146. The Petitioners similarly cited to the UN DRIP's specific treatment of indigenous "communal" property and to the UN Human Rights Committee's General Comment No. 23 on indigenous property rights to assist in interpreting that right under the Declaration in the context of the evolving international human rights law of indigenous peoples. Petition Paragraphs 148 and 149 and n. 90. Again, as to the right to equality, the Petitioners cite to the American Convention, ICCPR, ICERD, the UNDRIP, and *jus cogens* norms to interpret the strength and scope of that same fundamental right under the Declaration. Petition Paragraphs 151-152. Regarding the third claim, the right to judicial protection and due process (the right to an effective remedy), under the Declaration (Paragraph 160), the Petitioners reference essentially the same right under the American Convention and the application of that right to indigenous peoples. Petition Paragraphs 160-165. The Petition then expressly relates the caselaw under the American Convention pertaining to indigenous peoples to the right under the American Declaration in interpreting that instrument as applied to indigenous peoples. Petition Paragraphs 164, 165-170. The Petition further consults the UNDRIP and the UN CERD on its discussion of that right when applied to indigenous peoples. The Petition concludes by asserting a claim for violations *only* of the American Declaration. Petition Paragraphs 180 and 181.

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[157] Dann (2002), 167 (emphasis supplied), *supra* note 3.
[158] *Citing* to IACHR Report No. 61/08, Case 12.435, Grand Chief Michael Mitchell (Canada), Merits July 25, 2008, para. 68.

87. In the Request for Relief, the Petitioners again assert claims and request relief for violations *only* of the American Declaration. Petition Paragraph 182. In contrast and for example, in the Dann case asserting similar violations of indigenous human rights the Commission consulted the American Convention (paras. 126, 127), the ILO (paras. 127), the UN HRC (paras. 127, 128), the UN CERD (paras. 127), the *draft* ADRIP (paras. 129), Notably, the Commission in Dann, after conducting its analysis, concluded that "the provisions of the American Declaration should be interpreted and applied in the context of indigenous petitioner *with due regard to the particular principles of international law governing the individual and collective interests of indigenous peoples*." The Commission then emphasized that the "[p]articularly pertinent provisions of the Declaration in this respect include Article II (the right to equality under the law), Article XVIII (the right to a fair trial), and Article XXIII (the right to property)."[159] These are the very same three Declaration Articles that are the basis for the indigenous Petitioners' claims in this matter.

88. The claims of Onondaga Nation and Haudenosaunee Confederacy are clearly and properly asserted within the factual context of colonialism to be interpreted within the legal *context* of the evolving standards of international human rights law, the international law of indigenous peoples, and international law generally. Even were the Petitioners have asserted and sought relief for violations other human rights instruments, the Commission would avoid declaring violations of those instruments but would property consider those other instruments, as well as any other relevant international human rights standards, in applying the American Declaration to the Petitioners' claims.[160] This challenge, manufactured by the State's misstatement of the allegations contained in the Petition, simply has no substance in fact or law.

B. The Commission Properly Employs General Principles of International and Human Rights Law, Including the Law of Fundamental Rights and *Jus Cogens*, in Applying the American Declaration to Petitioners' Claims

89. In a related discussion of this last issue, it is significant that in addition to the Petitioners' citations to other human rights instruments and caselaw to buttress their claims under the Declaration, the rights secured in the Declaration codify fundamental (inalienable) rights and *jus cogens* norms – "a norm from which no derogation is permitted." The Charter of the Organization refers to the fundamental rights of man in its Preamble ((paragraph three) and in Arts. 3(j), 16, 43, 47, 51, 112 and 150; Preamble (paragraph four), Arts. 3(k), 16, 44, 48, 52, 111 and 150.

[159] Dann (2002), para. 131 (emphasis supplied), *supra* note 3.
[160] IACHR, Report No. 232/22, Petition 2152-15, Sandra Bland, et al. (United States), Admissibility, August 28, 2022, para. 22.

90. In the Saramaka case, for example, the Inter-American Court highlighted the essential importance of the right to effective and appropriate judicial relief against acts that violate fundamental rights of indigenous peoples, including their right to communal property.[161]

91. Colonialism, and racism, in *any* "form or manifestation" by their very definition violate the fundamental ("inalienable") rights to life (i.e., genocide, ethnocide, right to collective existence)[162], liberty (i.e., freedom from alien domination or rule)[163], security (i.e., freedom from territorial invasion, theft of lands and resources, alien rule)[164], dignity (i.e., denial of sovereignty and nationality, culturecide)[165], and equality (expressed collectively)[166] of nations and peoples[167], to "complete freedom of peoples"[168], "the exercise of their sovereignty"[169], and "the integrity of their national territory"[170]. Colonialism is itself a violation of the fundament rights of self-determination[171] and of peoples and to be free of subjection to alien subjugation, domination, and exploitation[172] and racial or ethnic discrimination in any form or manifestation[173].

92. The American Convention on Racism acknowledged that racially "discriminatory attitudes are a negation of universal values and the inalienable and infrangible rights of the human person and the purposes and principles enshrined in the Charter of the Organization of American States, the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights, …the Universal

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[161] IACHR, Application brought before the IA Court of HR in the Case of the Saramaka People v. Suriname, June 23, 2006, paras. 177, 178.
[162] American Declaration, Arts. I and XI; *Universal Declaration of Human Rights* (UDHR), GA Res. 217A(III), UNGAOR, 3rd Sess., Supp. No. 13, UN Doc. A/810 (1948)71, Art. 3; *ICCPR*, Art. 6(1).
[163] UDHR, Art. 3; UNGA Res. 1514, preamble, para. 11 ("complete freedom"); ICCPR, preamble paras. 3, Art. 9(1).
[164] American Declaration, Arts. VIII, IX, XI; UDHR, Art. 3; ICERD, Art. 5(b); ICCPR, preamble paras. 1 and 2 (the "inalienable rights of all members of the human family" "derive from the inherent dignity of the human person"), Art. 9(1).
[165] American Declaration, Arts. V, XII; UDHR, Arts. 5 and 6; ACARD, Preamble paras. 1 and 2 (affirm same in UDHR, the American Declaration, American Convention, and the ICERD); ICERD, preamble paras. 1-2; ICCPR, Arts. 7 and 10; ICESCR, Preamble paras. 1 and 2.
[166] American Declaration, Art. II; UDHR, Arts. 1, 2, and 7; ICERD, preamble paras. 1-3, Art. 5(a); ICCPR, Arts. 3, 14(1), and 26; IACHR, Report No. 125/12, Case 12.354, Kuna Indigenous People of Madungandi and Embra Indigenous People of Bayono and Their Members (Panama), November 13, 2012, para. 288.
[167] UN Charter, Preamble, para. 1 Art. 1(2); UNGA Res. 1514, preamble, paras. 1.
[168] American Declaration, Arts. III and IV; UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.
[169] American Declaration, Art. IV; UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.
[170] UN Charter, Preamble, para. 1, Art. 1(2); UNGA Res. 1514, preamble para. 11.
[171] Vienna Declaration, Art. 2, paras. 1 and 2; UNGA Res. 1514, preamble para. 2, Art. 2; ICCPR, Art. 1; UN Charter, Art. 1(2).
[172] UNGA Res. 1514, preamble para. 1, Art. 1; ICERD, preamble paras. 4.
[173] ICERD, preamble pars. 5-13, Arts. 1-7.

Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination ….”[174]

93. These are the existential “essential rights of man” the protection of which is the purpose and goal of the American Declaration.[175] The Declaration then[176] directs: “The international protection of the rights of man should be the principle guide of an evolving American law.” The Declaration affirms the rights to freedom and equality, “in dignity and in rights”, “being endowed by nature.”[177] The rights asserted in the Petitioners’ First and Second Claims, the Onondaga Nation’s and peoples’ rights to property (territorial integrity, security, life) and equality assert fundamental, inalienable, infrangible, rights.

94. The Declaration proclaims that the “fulfillment of duty”, the *erga omnes* responsibility of member States to protect fundamental rights, including the United States, “is a prerequisite to the rights of all.”[178] It declares that a State’s “[d]uties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.”[179] It recognizes that the human right to an effective remedy, the right to judicial protection and due process asserted in the Petitioners’ Third Claim, the “right to have rights”, is essential to the protection of fundamental rights. This right speaks not only to the failure of the colonial State’s domestic law set forth by the Onondaga Nation and Haudenosaunee Confederacy Petition and their Third Claim, but also to the responsibility and “duty” of this body, the Organization of American States and its Inter-Commission on Human Rights, to protect those rights and bind the obedience of the United States under the OAS Charter and Declaration.

95. The Declaration concludes by proclaiming “spiritual development” as “the supreme end of human existence and the highest expression thereof” and that “it is the duty of man to serve that end with all of his strength and resources.”[180] It acknowledges “culture” as the “highest social and historical expression of that spiritual development” and that “it is the duty of man to preserve, practice and foster culture by ever means within his power.”[181] These are mandates by the OAS General Assembly and its member States, including the United States, to all OAS members and its institutions, including the Commission. They should guide the Commission in the interpretation of the Declaration

[174] ACARD, Preamble para. 2.
[175] American Declaration, Whereas paras. 1 and 2.
[176] American Declaration, Whereas para. 3.
[177] American Declaration, Preamble para. 1.
[178] American Declaration, Preamble para. 2.
[179] American Declaration, Preamble para. 3.
[180] American Declaration, Preamble para. 4.
[181] American Declaration, Preamble para. 5

in its application to this matter and in construing the obligations of the United States thereunder.

96. Very significantly, the Commission in Dann "emphasized" the great importance of these provisions on spirituality as expressions by the OAS of "the very purposes underlying the Declaration."[182] The Commission recognized that the indigenous peoples of the Americas, including here the Onondagas and Haudenosaunee, are "spiritual" peoples having a spiritual relationship with and responsibility to their ancestral lands. The Commission opined that it was required to respect these very purposes of the Declaration in interpreting the American Declaration "so as to safeguard the integrity, livelihood and culture of indigenous peoples through the effective protection of their individual and collective human rights"[183] "The Inter-American Court of Human Rights has similarly recognized that for indigenous communities the relation with the land is not merely a question of possession and production but has a material and *spiritual* element that must be fully enjoyed to preserve their cultural legacy and pass it on to future generations."[184]

97. This union of the fundamental rights to the free exercise of religion (spirituality), to property, to territorial integrity, to health, and to culture, freedom, and the enjoyment of life, is the essence of the Onondaga and Haudenosaunee right to property, Petitioners' First Claim, as well as their right to equality as spiritual (chthonic) peoples in the recognition of their property rights, Petitioners' Second Claim, and their right to have their spirituality in their life and property essential for their survival protected, Petitioners' Third Claim. The fundamental nature of the rights before the Commission in this matter buttress Petitioners' claims and drive the responsibilities of both the United States and the Commission to protect them pursuant to the express intent of the American Declaration.

98. Similarly, the Inter-American Commission and Court have found that *jus cogens* norms also buttress claims for protection of human rights under the American Declaration and Convention.[185]

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[182] Dann (2002), para. 131, *supra* note 3.
[183] Dann (2002), para. 131, *supra* note 3.
[184] Dann (2002), para. 131 (emphasis supplied) (*citing among other authorities*, Article 13 of the ILO Convention (No. 169) which provides that "[i]n applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship."), *supra* note 3.
[185] *See*, IACHR, Report No. 29/20, Case 12.865, Djamel Ameziane (United States), Merits, April 22, 2020, para. 138, 249, 256; IACHR, Report No. 101/03, Case 12.412. Napoleon Beazley (United States), Merits, December 29, 2003, paras. 48-49; IACHR, Case 12.285, Report 65/02, Michael Domingues (United States), Merits, October 22. 2002, paras. 85, 86; Roach, paras. 56, 57, 60.

> Turning to the rules which govern the establishment of rules of *jus cogens*, his Commission has previously defined the concept of *jus cogens* as having been derived from ancient law concepts of a "superior order of legal norms, which the laws of man or nations may not contravene" and as the "rules which have been accepted, either expressly by treaty or tacitly by custom, as being necessary to protect the public morality recognized by them." It has been said that the principal distinguishing feature of these norms is their "relative indelibility," in that they constitute rules of customary law which cannot be set aside by treaty or acquiescence but only by the formation of a subsequent customary rule of contrary effect. More particularly, as customary international law rests on the consent of nations, a state that persistently objects to a norm of customary international law is not bound by that norm. Norms of *jus cogens*, on the other hand, derive their status from fundamental values held by the international community, as violations of such preemptory norms are considered to shock the conscience of humankind and therefore bind the international community as a whole, irrespective of protest, recognition or acquiescence. …It has been suggested that a reliable starting point in identifying those international legal proscriptions that have achieved *jus cogens* status is the list of rights that international human rights treaties render non-derogable.
>
> Therefore, while based on the same evidentiary sources as a norm of customary international law, the standard for determining a principle of *jus cogens* is more rigorous, requiring evidence of recognition of the indelibility of the norm by the international community as a whole. This can occur where there is acceptance and recognition by a large majority of states, even if over dissent by a small number of states.[186]

99. Where a *jus cogens* norm is present, the rights expressed in the American Declaration must interpreted in light of and consistent with that norm.[187] The Commission ruled, for example, in the Domingues case that "[a]s a *jus cogens* norm, this proscription binds the community of States, including the United States. The norm cannot be validly derogated from, whether by treaty or by the objection of a state, persistent or otherwise."[188] In Ameziane, the Commission recently opined that "the incorporation of the *jus cogens* [norm] is a textbook example of the proper interpretation and application

[186] Domingues, paras. 49, 50 (*jus cogens* norm recognized over the objections of the United States), *id*.; *also*, Beazley, para. 49, *id*..
[187] Ameziane (2020), para. 258, *supra* note 185; Domingues, paras. 85, 86.
[188] Domingues, para. 85.

of the American Declaration in line with the currently-existing *corpus juris* of international human rights law."[189]

100. The principles of equality before the law, equal protection, and non-discrimination are *jus cogens* norms that have been recognized by the Inter-American Commission and Court.[190] These equality principles underly all of Petitioners' claims in this matter. The recognition of the right of indigenous peoples to self-determination (which incorporations other rights such as to sovereignty, nationality, territory, lands and natural resources, dignity, etc.) has evolved to a *jus cogens* norm.[191] Life is a recognized *jus cogens* norm,[192] a norm implicated by the toxic contamination of Onondaga lands and bodies. A denial of access to justice[193] and due process of law (asserted in Petitioners' Third Claim) has also been promoted as a *jus cogens* norms.[194] A "systemic practice of human rights violations" such as that which occurs, as here, under institutionalized colonialism and racism may be said to violate international *jus cogens* norms.[195]

101. The nature of the rights invoked by this Petition under the American Declaration are fundamental and *jus cogens* norms to which every State possesses an *erga omnes* responsibility to respect and protect and from which no State may derogate. They are the highest level of rights and norms of international law and require the broadest scope and application and strict State compliance and obeisance.

C. The Petitioners' "Collective Rights" Claims Fall Within the Scope of the American Declaration and Are Therefore Within the Commission's Competence

[189] Ameziane (2020), para. 258, *supra* note 185.
[190] Ameziane (2020), para. 249, 258, *supra* note 185; I/A Court H.R., Advisory Opinion OC-18/03 "Juridical Condition and Rights of Undocumented Migrants." September 17, 2003, paras. 100-101, 132.
[191] International Court of Justice, Advisory Opinion, "Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965." 25 February 2019. (Separate Opinion of Judge Robinson, Separate Opinion of Judge Cancado Trindade (paras. 118-174), Separate Opinion of Judge Sebutinde (paras. 11, 13, 25, 47)); African Court on Human and Peoples' Rights, Bernard Anbataayela Mornah v. Republic of Benin, et al., Application No. 028/2018. Judgment. 22 September 2022, para. 298; UN Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, "Right of peoples to self-determination-Special Rapporteur study (excerpts): Implementation of United Nations Resolutions Relating to the Right of Peoples Under Colonial and Alien Domination to Self-Determination," E/CN.4/Sub.2/405(vol.1), 20 June 1978 (UN Special Rapporteur Hector Gros Espiell / The Question of Palestine); Gino J. Naldi, "The East Timor Case and the Role of the International Court of Justice in the Evolution of the Right of Peoples to Self-determination," 5(1) Australian J. of Hum. Rts 106 (1999).
[192] Beazley, para. 49; Domingues, para. 85, *supra* note 185; *see also*, IACHR, Report No. 31/93, Case 10.573. Panamanians (United States). Admissibility. 14 October 1993, para. 53.
[193] Serrano-Cruz, para. 40, *supra* note 134.
[194] *See*, Juridical Condition and Rights of Undocumented Migrants, para. 121; Anthony J. Colangelo, "Procedural Jus Cogens," 60 Colum. J. of Transactional L. 377 (2022).
[195] I.A. Court H.R., Gomez-Paquiyauri Brothers v. Peru, Judgment of July 8, 2004, Ser. C. No. 110, Para. 76.

102. Absent from the State's Admission Response is any mention of the word "Indigenous", or the individual and collective rights of Indigenous nations and peoples within the Inter-American human rights processes. Also absent is any acknowledgment of the treaty obligations the State has to the Onondaga Nation and the Haudenosaunee Confederacy and the Nation's treaty rights to its ancestral homelands. This is consistent with the resistance in the domestic law of the United States to recognize collective rights particularly as to victims of racial and gender discrimination[196] under its "civil (individual) rights" law and of the recognition of indigenous communal fee ownership in its property law.[197]

103. The State's argument again ignores the evolution of human rights and the fact that individual rights can be exercised "collectively" as in the rights to self-determination, territory, security, nationality, culture, language, religion, and to a clean environment. Each of these settled human rights contains a collective element in their expression. As the Commission has previously decided, in addressing complaints of violations of the American Declaration such as those raised in this Petition:

> [I]t is necessary for the Commission to consider complaint in the context of evolving rules and principles of human rights law in the Americas and in the international community more broadly, as reflected in treaties, custom and other courses of international law. …[T]hese norms and principles encompass distinct human rights considerations relating to the ownership. Use and occupation by indigenous communities of their traditional lands.
>
> Central to these norms and principles is a recognition that ensuring the full and effective enjoyment of human rights by indigenous peoples requires

[196] *See*, *e.g.*, *Regents of California v. Bakke*, 438 U.S. 265 (1978) (which rejected the collective equal protection affirmative action programs remediating historic racial discrimination in favor of the individual right to racial equality of white people (*compare*, *Mabo I* (Australia High Court) enforcing the collective right to equality under the ICERD over the individual rights of white developers in the exercise of the right to property.).

[197] US property law issued from primarily the law of colonial England and John Locke on the nature of property and the preeminence and sacred duty found in the privatization of property in Chapter V of his SECOND TREATISE OF GOVERNMENT. For example, Locke is cited as a primary source in the M'Intosh decision ruling that the communal nature of possession by indigenous peoples of their lands did not constitute an ownership of property, that therefore the lands were as a matter of law unowned or *terra nullius*, and open to the *seizing*, the private property claims, of indigenous lands by the invading imperial nations of Europe and their people (*compare*, *Mabo I* (Australia High Court) enforcing the collective right to equality under the ICERD over the individual rights of white developers in the exercise of the right to property.). M'Intosh, 21 U.S. at 596, fns f, l, m; *see also*, Calum Murray, "John Locke's Theory of Property, and the Dispossession of Indigenous Peoples in the Settler-Colony," 10(1) Amer. Indian L. J. Article 4 (2022). It is this dominating and fundamental principle of European property law, of the exclusive private nature of ownership, that drove the breakup and theft of the territories and lands of all indigenous nations, including the Onondaga and Haudenosaunee, by the colonial power of the United States under its "Manifest Destiny" and its individual allotment of Indian lands policy (breaking up and privatizing of communal lands). *See*, James Tully, "Rediscovering America: The Two Treatises and Aboriginal rights" in G.A.J. Rogers, ed., LOCKE'S PHILOSOPHY: CONTENT AND CONTEXT (1994); Barbara Arnell, "Trade, Plantations, and Property: John Locke and the Economic Defense of Colonialism,"54 J. of the Hist. of Ideas 591-609 (1994).

> consideration of their particular historical, cultural, social and economic situation and experience. …[T]his has included identification of the need for special measures by states to compensate for the exploitation and discrimination to which these societies have been subjected at the hands of the non-indigenous.[198]

104. Indigenous nations and people were encouraged by the Commission's 1972 resolution on the problem of "Special Protection for Indigenous Populations. Action to combat racism and racial discrimination" and the Commission's proclamation that "for historical reasons and because of moral and humanitarian principles, special protection for indigenous populations constitutes a sacred commitment of the states."[199]

105. The State's summary dismissal of the Onondaga Nation's domestic cases, which focused on how long ago the harms of the illegal land takings were and then upon the expectations of the settlers, provided clear evidence that the state has not accepted this "sacred commitment."

106. The Commission's acknowledgment of, and giving effect to, particular protections in the context of human rights of Indigenous peoples has proceeded in tandem with developments in international human rights law more broadly. Special measures for securing indigenous human rights have been recognized and applied in other international spheres, including most predominantly the Inter-American Court on Human Rights and the 2007 adoption of the United Nations Declaration on the Rights of Indigenous Peoples.

107. Most fundamentally, the Commission and other international authorities have recognized the *collective* aspect of Indigenous rights.[200] This recognition is founded on the "*acknowledgment of a particular connection between Indigenous nations and peoples and their lands and resources that they have traditionally occupied and used, because the preservation of the lands and resources is fundamental to the effective realization of the human rights of Indigenous peoples. Therefore, special measures of protection have been recognized for Indigenous peoples*."[201]

108. Further, in the 2002 Dann decision, the Commission also noted "control over the land refers both [to] its capacity for providing the resources to sustain life, and to the geographic space necessary for the cultural and social reproduction of the group."[202]

109. Individuals, like the Dann sisters in the Commission's Dann case, are the beneficiaries in the collective rights of peoples, including their identity as "indigenous" peoples (equality, protection, culture, property, spirituality), as members and citizens of an indigenous nation (self-determination, sovereignty, nationality, territory, protection), as beneficiaries of treaties between their indigenous nation and the nation of the United

[198] Dann (2002), para. 124, *supra* note 3.
[199] Dann (2002), para. 126, *supra* note 3.
[200] Dann (2002), para. 128, *supra* note 3.
[201] *Id*. (emphasis supplied).
[202] *Id*.

States (self-determination and sovereignty, effective remedy, protection), and as residents and users of their nation's territory (property, sovereignty, self-determination, nationality), lands, and natural resources (property, spirituality, economy).

110. The State's argument also avoids the uniform caselaw of the Commission and the Court recognizing collective rights and the standing of those that assert them. On this question, the Commission stated decisively in its Punta Piedra decision:

> Additionally, both the IACHR and the Inter-American Court have established that indigenous peoples, as collective subjects who are separate and distinct from their individual members, are entitled to rights recognized by the American Convention. In this connection, in the judgment of the *Case of the Kichwa de Sarayaku Indigenous People v. Ecuador,* the Inter-American Court stated that "international standards regarding indigenous peoples and communities recognizes the right of peoples as collective subjects of International Law and not only their members." Moreover, the Court clarified that "because indigenous or tribal peoples and communities, who are cohesively bound by their particular ways of life and identity, exercise some rights recognized by the Convention in a collective dimension, the Court holds that considerations of law expressed or interpreted in the instant Judgment must be understood from said collective perspective." Accordingly, as it has done in previous matters, the IACHR shall examine the instant matter from a collective perspective.[203]

111. The Commission in Punta Piedra cited to its long list of prior decisions recognizing and enforcing the collective rights of indigenous peoples: Case of Mayagna (Sumo) Awas Tingni Community (Nicaragua) (1998); Case of the Yakye Axa Indigenous Community (Paraguay) (2003); Mayan Indigenous Communities of the District of Toledo (Belize) (2004); Case of the Sawhoyamaxa Indigenous Community (Paraguay) (2005); Case of the Saramaka People (Suriname) (2006); Case of the Xákmok Kásek Indigenous Community (Paraguay) (2009); Case of the Kichwa de Sarayaku People and its members (Ecuador) (2010).[204] The Commission Punta Piedra decision was affirmed by the I/A

[203] IACHR, Report No. 30/13, Case 12.761, Garifuna Community of Punta Piedra and Its Members (Honduras), Merits, March 21, 2013, para. 89, notes 90 and 91.

[204] IACHR, Application brought before the IA Court of HR in the Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua, June 4, 1998; IACHR, Application brought before the IA Court of HR in the Case of the Yakye Axa Indigenous Community v. Paraguay, March 17, 2003; IACHR, Report No. 40/04, Case 12.053, Mayan Indigenous Communities of the District of Toledo v. Belize, October 12, 2004; IACHR, Application brought before the IA Court of HR in the Case of the Sawhoyamaxa Indigenous Community v. Paraguay, Feburary 2005; Saramaka (2006), *supra* note 161; IACHR, Application brought before the IA Court of HR in the Case of the Xákmok Kásek Indigenous Community v. Paraguay, July 3, 2009; IACHR, Application brought before the IA Court of HR in the Case of the Kichwa de Sarayaku People and its members v. Ecuador, April 26, 2010.

Court.[205] *See also,* Our Land (Lhaha Honhat Association / 132 indigenous communities asserting communal property rights) (Argentina) (2020);[206] Xucuru Indigenous People (Brazil) (2015);[207] Garifuna Community of Cayos Cochinos and its Members (Honduras) (2007);[208] Mary and Carrie Dann (United States) (1999) (recognizing the derivative collective property right of members to treaty lands of the Western Shoshone Nation).[209]

112. The Commission in Kamina and the I/A Court in Saramaka each held that the State's failure to recognize the collective capacity of the Saramaka peoples was a denial of the peoples' right to a juridical personality.[210]

113. The State contends that in interpreting the nature of the rights of indigenous peoples, the Commission cannot consult the American Convention or the UN DRIP, or other international instruments and international law as they pertain to indigenous peoples. Response, 11-12, notes 46-50. As demonstrated in the previous section, this contention is misplaced and meritless. The Commission is not only free to, but must when needed, consult the American Convention, the UN DRIP, the ADRIP and other international instruments and law to interpret provisions of the American Declaration.[211]

114. The development of these principles for special measures for Indigenous peoples in the Inter-American human rights system culminated in the drafting and 2016 adoption of the American Declaration on the Rights of Indigenous peoples, the ADRIP, which provides for the protection of traditional forms of ownership and cultural survival and rights to land, territories and resources.

115. Of particular relevance to this Petition, the Commission has found that general international law principles applicable to the context of Indigenous human rights to include:

a. The right of Indigenous peoples to legal recognition of their varied and specific forms and modalities of their control, ownership, use and enjoyment of traditional territories and property,[212]

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[205] I/A Court H.R., Case of the Punta Piedra Garifuna Community and Its Members v. Honduras, Judgment of October 5, 2015, para. 169.
[206] Our Land (2020), paras. 27, 28, 30, 31, 35 n. 20 ("indigenous communities are holders of rights protected by the Inter-American system and may appear before it to defend their rights and those of their members."), *supra* note 129.
[207] IACHR, Report 44/15, Case 12.728. Xucuru Indigenous People (Brazil), Merits, July 28. 2015, paras. 67-71 (recognizing and enforcing the collective (communal) property rights of indigenous peoples).
[208] IACHR, Report 30/07, Case 1118-03, Garifuna Community of Cayos Cochinos and its Members (Honduras), Admissibility, July 24, 2007.
[209] IACHR, Report No. 99/99, Case 11.140, Mary and Carrie Dann (United States), Admissibility, September 27, 1999, paras. 3-5.
[210] Kalina, paras. 83-87; Saramaka (2006), paras. 174-175, *supra* note 161.
[211] *See*, discussion above in the section entitled: "The Commission Properly Employs Relevant International Instruments, and Relevant Case Law in Interpreting the American Declaration."
[212] ADRIP, Article XXV(5).

b. The recognition of their property and ownership rights with respect to lands, territories and resources they have historically occupied.[213]

116. The Preamble to the ADRIP expresses concern: "that indigenous peoples have suffered from historic injustices as a result of, inter alia, **their colonization and dispossession of their lands, territories and resources**, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests."[214]

117. The Nation's Petition in this matter directly addresses the harms caused by the State's colonial policy of illegally taking their ancestral homelands, territories and water resources. The Onondaga Nation's domestic litigation was centrally focused on gaining redress for the historic, illegal takings of their ancestral lands, and yet it was summarily dismissed in the State's courts. Rather than implementing special measures to protect and provide remedies of these historic land thefts, the State's courts concocted a special protection for the perceived "justifiable expectations" of the settlers.

118. The ADRIP Preamble continues to recognize "the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, **especially their right to their lands, territories and resources**."[215]

119. Section Two of the ADRIP is entitled: "Human Rights and Collective Rights" and it stresses the central importance of collective rights for Indigenous peoples: "*Indigenous peoples have **collective rights** that are **indispensable** for their existence, well-being, and integral development as peoples*."[216]

120. Additionally, in ADRIP Article XXIV, Indigenous Peoples treaty rights were recognized: "*Indigenous peoples have the right to the recognition, observance, and enforcement of treaties . . . and to have States honor and respect same*." Again, the State's courts completely failed to address, let alone honor, the commitments to the Haudenosaunee and the Onondaga Nation in the three treaties of 1784, 1789 and 1794 in violation of the collective rights of the Onondaga peoples. Therefore, applying ADRIP Article XXIV(2) in interpreting the Petitioners' treaty claims under Articles II, XXIII, and XXVII of the American Declaration, this dispute relating to those treaties has been properly submitted to the Commission. The Commission is fully competent to review the State's failure to honor the treaty rights of the Onondaga people.

[213] ADRIP, Article XXV(2).
[214] ADRIP, Preamble, para. 5 (emphasis added).
[215] ADRIP, Preamble, para. 6 (emphasis added).
[216] ADRIP, Article VI (emphasis added).

121. The Nation's domestic litigation was directed towards exercising "the right to the lands, territories and resources which they ha[d] traditionally owned, occupied or otherwise used or acquired." However, the State completely failed to meet its obligations under the American Declaration's Article XXIII right to property (the Petitioners' first claim) interpreted using ADRIP Article XXV(4), because it not only did not "give legal recognition and protection" to these ancestral homelands as required by these Articles, its courts actually created a special defense to defeat all Haudenosaunee land claims, under its newly concocted "settlers' reasonable expectations" defense, which only applies to Indigenous land rights cases.

122. The summary dismissals of the Haudenosaunee domestic land rights cases also violated their collective rights under Articles II and XXVII of the American Declaration interpreted in light of ADRIP Article XXXIII, in that there is no "effective and suitable remedies, including prompt judicial remedies" for the illegal takings of their ancestral homelands.

123. The Commission has addressed how the provisions of the American Declaration should be interpreted and applied in the context of Indigenous petitioners, and has ruled that such interpretation must be done,

> …[w]ith due regard to the particular principles of international human rights law governing the individual and collective rights of indigenous peoples. Particularly pertinent provisions of the Declaration in this respect, include Article II (the right to equality under the law), Article XVIII (the right to a fair trial), and Article XXIII (the right to property).[217]

124. Violations of each of these rights and Articles has been alleged in the Nation's Petition, and so the Commission is urged to apply the same principles in this case.

125. The Commission has also ruled that applications of these Articles to Indigenous Petitions requires "the taking of special measures to ensure recognition of the particular and collective interest that indigenous people have in the occupation and use of their traditional lands and resources and their right not to be deprived of this interest except with fully informed consent, under conditions of equity…."[218]

126. Again, rather than taking such mandated special measures to protect the collective rights of the Onondaga Nation with respect to their illegally taken ancestral lands, the State's courts did the opposite and created special measures which only protect the colonial State and the colonial settlers currently occupying the lands, resulting in dismissal of the Nation's domestic action.

127. The Inter-American Court of Human Rights has recognized that for Indigenous peoples the relationship with the land is not merely a question of possession

[217] Dann (2002), para. 131, *supra* note 3.
[218] *Id*.

and production but has a collective material and spiritual element that must be fully enjoyed to preserve their cultural legacy and pass it on to future generations.[219] The Commission has emphasized that:

> …by interpreting the American Declaration so as to safeguard the integrity, livelihood and culture of indigenous peoples through the effective protection of their individual and collective human rights, the Commission is respecting the very purposes underlying the Declaration which, as expressed in its Preamble, include recognition that "[s]ince culture is the highest social and historic expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means in its power."[220]

V. DENIAL OF AN EFFECTIVE REMEDY – THE PROCEDURAL HISTORY OF THE PETITIONERS' LAND RIGHTS ACTIONS IN THE DOMESTIC COURTS

130. The Nation filed its domestic action, Onondaga Nation v. State of New York, et al., in the US District Court [the lowest level federal court] on March 11, 2005. The State of New York, the primary defendant, promptly moved to dismiss. The United States failed to respond to repeated Nation requests to join the Nation in its request that the Court entertain the multiple treaty violations by New York state which the Nation had raised in the matter. Only a single court appearance was held in the District Court on the oral argument on New York's motion to dismiss, which was granted on September 22, 2010.[221]

131. The Nation appealed that dismissal to the United States Court of Appeals [the intermediate federal appeals court]. Oral argument was limited to ten (10) minutes, on Columbus Day in 2012, and one week later the Circuit Court summarily affirmed the lower court's dismissal:

> This appeal is decided on the basis of the equitable bar on recovery of ancestral land in *Sherrill*, and this Court's cases…. Three specific factors determine when ancestral land claims are foreclosed on equitable grounds: (1) "the length of time at issue between an historical injustice and the present day"; (2) "the disruptive nature of claims long delayed"; and (3) "the degree

[219] I/A Court H.R., Case of Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of August 31, 2001, Ser. C No. 79, para. 149.
[220] Dann (2002), para. 131, *supra* note 3.
[221] Onondaga Nation v. State of New York, et al., U.S. Dist., New York, Ct. Case No. 5:05-cv-0214, Memorandum-Decision and Order of September 22, 2010, 2010 WL 3806492 (attached as Reply Exhibit 1).

to which these claims upset the justifiable expectations of individuals and entities far removed from the events giving rise to the plaintiffs' injury.[222]

132. In an attempt to justify this new so-called equitable rule, the Circuit Court explained that any Indigenous land rights action or claim was inherently disruptive and that the illegal takings of the Onondaga ancestral homelands took place in the 1790s and early 1800s, a laches ruling. The Circuit went on the rule that: "As to settled expectations, the district court took 'judicial notice' that the contested land has been extensively populated by non-Indians, such that the land is predominantly non-Indian today."[223]

133. When these three factors are examined, the dismissal of the Nation's domestic action can be seen as even more suspect, unfair, and as establishing the clear United State legal precedent that no remedy is available to Indigenous nations for illegally takings of their ancestral homelands, even when those lands are protected by treaties with the United States. The Haudenosaunee treaties are 230 years old. The United States Constitution states that "treaties are the supreme law of the land"[224]

134. The Nation requested certiorari review by the United States Supreme Court was denied, exhausting the Nation's domestic remedies.[225]

135. The Nation had presented 1000s of pages of expert historical evidence which was not even considered by the US courts. No factual hearings were held, and only very limited oral arguments were heard. There has never been a scintilla of proof that the Onondaga land claims have been disruptive in any manner. Likewise, no proof was submitted to establish the "justifiable expectations" of the settlers presumed by the Circuit Court which formed an essential basis for this rule of law that precludes any judicial relief for Indigenous nations in the United States for the illegal seizures of their homelands and treaty violations.

136. It should also be noted this three-factored rule of automatic dismissal stands despite lower court findings that the lands have been knowingly and illegally taken by New York, in clear defiance of the United States Constitution, a United States statute, 24 USC § 177, the three treaties of 1784, 1789 and 1794, and repeated contemporaneous warnings from the federal government to New York.

137. So, the domestic court system's rule from the Onondaga and Haudenosaunee land rights cases is that despite clearly illegal takings of the Haudenosaunee lands, there is *no available remedy of any nature* in the United States courts.

THE OTHER HAUDENOSAUNEE LAND CLAIMS: ALL DISMISSED:

[222] Onondaga Nation v. New York, 500 Fed.Appx. 87, 89 (2nd Cir. 2012) (citations and quotation marks omitted) (attached as Reply Exhibit 2).
[223] *Id*.
[224] United States Constitution, Article VI, Cl. 2.
[225] Onondaga Nation v. New York, et al., No. 12-1279, 571 U.S. 969 (2013).

138. The United States extensive references to the land claim cases of the sister Oneida and Cayuga Nations is both deceptive and inaccurate. The Onondaga Nation was not a party to either of those actions and did not participate in any of the court proceedings in them. Despite decades of litigation in those two Nations' land claim matters, the US courts provided absolutely no relief for clear treaty violations which resulted in the loss of millions of acres of homelands and which the courts acknowledged were illegal takings. Both Nations' land claims matters were dismissed by the United States courts, with no relief of any nature for this massive land theft.

139. There was no "extensive litigation" of the Onondaga land claims in the domestic courts as they were summarily dismissed by the United State courts, based upon the Sherrill decision and the Circuit Court's dismissals of both the Oneida and Cayuga land claims. None of these three sister Haudenosaunee Nations have received any justice or remedy for the illegal seizures of their homelands. The doors to United States courthouse are completely closed and barred to Indigenous nations' treaty-based claims to their homelands. The fact that these same courts have denied *all* remedies to the Nation renders false the State's assertion that United States courts have "fully adjudicated the issues raised in the Petitioner".

140. Further, in its Response at page 4, the State *admitted* that, despite the decades of litigations by all three Indigenous Nations, the United States courts have concluded that the Nations "are not entitled to [any] relief as either a matter of law or equity." At page 12 of the Response, the State acknowledges: "*The Haudenosaunee land claims have been given very extensive and thorough exploration by the United States federal court. For over, fifty years, federal courts, including the United States Supreme Court, have scrutinized the issue and determined that federal courts cannot order the return of title to the Tribes*." (emphasis supplied) This statement tends to obscure the fact all this past domestic litigation, at great costs to these Haudenosaunee Nations, has resulted in a complete denial of their treaty rights and their rights to their stolen homelands.

141. The fundamental inequity and arbitrariness of the US courts' complete dismissals of land rights action and complete denial of any relief can be more fully understood by reviewing the Circuit Court's dismissals in the Cayuga and Oneida cases. On June 25, 2005, just three months after the US Supreme Court's decision in Sherrill, the Circuit Court dismissed the Cayuga land claims using the Sherrill decision as its rationale.[226] After three decades of litigation the Cayugas' case had been reduced to only a monetary award as purported compensation for New York's illegal land seizures rather a restoration of Cayuga lands, a remedy the District Court ruled was not available. The Circuit Court's legal discussion began by recognizing the sweeping changes generated by the Sherrill decision:

> The Supreme Court's recent decision in *City of Sherrill v. Oneida*

[226] Cayuga Indian Nation of New York v. Pataki, 413 F.3d 266 (2nd Cir. 2005).

> *Indian Nation,* 544 U.S. 197, 125 S.Ct. 1478, 161 L.Ed.2d 386 (2005), has dramatically altered the legal landscape against which we consider plaintiffs' [Indian nations' land] claims. …
>
> We understand *Sherrill* to hold that equitable doctrines, such as laches, acquiescence, and impossibility, can, in appropriate circumstances, be applied to Indian land claims**, even when such a claim is legally viable and within the statute of limitations.**[227]

142. Rather than explain how the monetary award would be "disruptive", the Circuit attempted to justify this "new laches" defense by stating:

> One of the few incontestable propositions about this unusually complex and confusing area of law is that **doctrines and categorization applicable in other areas do not translate neatly to these claims.**[228]

Remarkably, the new laches defense only applies to Indigenous nations' land rights cases. So, the United States courts' treatment of Indigenous land rights and treaty rights is separate and unequal.

143. This pattern of United States courts changing the rules in midstream, to deny any remedy to Indigenous nations, continued five years later when the Circuit Court dismissed the Oneida Nation's land claim, in Oneida Indian Nation v. City of Oneida.[229] After four decades of "extensive litigation", the Circuit Court admitted that essentially, it had concocted a new defense to Indigenous land claims, which is far from equitable:

> We have used the term "laches" here …as a convenient shorthand for the equitable principles at state in this case, but the term is somewhat imprecise for the purposes of deciding those principles ….
>
> The Oneidas assert that the invocation of the **purported laches defense** is improper here because [New York] ha[s] not established the necessary element of such a defense. This omission, however, is not ultimately important, as the equitable defense recognized in *Sherrill* and applied in *Cayuga* **does not focus on the elements of traditional laches** ….[230]

144. There can be no doubt that, this rule of automatic dismissal of Indigenous land rights cases is an entirely new "equitable" defense which does not require defendants to comply with the traditional, centuries-old principles of equity. This new

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[227] Cayuga, 544 U.S. at 273 (emphasis supplied).
[228] Cayuga, 544 U.S. at 275 (emphasis supplied).
[229] Oneida Indian Nation v. City of Oneida, 617 F.3d. 114 (2nd Cir. 2010), *cert. den.* 565 U.S. 970 (2011).
[230] Oneida (2010), 617 F.3d at 127 (emphasis added).

defense only applies to Indigenous nations' land rights cases. Once again, separate and more unequal.

145. It seems remarkable for the State's Response on pages 4 to 8 to expound about Sherrill and the Oneida and Cayuga dismissals, when the final results, for all three Haudenosaunee Nations has been an absolute denial of any remedy for clearly illegal and unconstitutional seizures of their homelands.

146. These domestic courts' rulings that Indigenous land rights actions are governed by rules which are distinct and different for the rules applied to all other litigants and which the domestic courts keep changing are violations of the human rights of the Onondaga people. The Onondagas have not been "afforded equal treatment under the law respecting the determination of their property interest in th[eir] ancestral lands, contrary to Article II of the Declaration."[231]

LAND INTO TRUST:

151. In its Response, the State placed heavy emphasis on the 2005 US Supreme Court decision in City of Sherrill v. Oneida Indian Nation[232] to bolster its argument the us courts have fully decided all issues raised in this Petition, and to claim that federal regulations "provide a mechanism by which a Tribe can acquire trust lands". By this reliance on Sherrill, the State has re-affirmed that United States Indian law is founded on the previously discussed racist and colonial doctrine of Christian discovery and domination, and that the State claims that Indigenous nations never held title to their lands, with the corollary that the State claims to hold title to *all* Indigenous lands within its territorial borders.

152. In an attempt to obfuscate the State's failure to honor its treaties with Indigenous nations and the failure of its courts to provide any protections for stolen ancestral homelands, the State's Admissions Response at page 7 claimed that: "the Supreme Court noted [in Sherrill] that federal law . . . provides a mechanism by which a Tribe can acquire trust lands, over which it exercises sovereign authority." This mechanism is called "land into trust" in the United States's legal framework. However, land into trust does not result in a nation's sovereign authority over their lands. It instead mandates turning the title of the lands over to the United States, which then exercises superior authority of the land and its resources as a manifestation of its continuing colonial rule.

153. In 1987, the United State Senate Select Committee on Indian Affairs declared emphatically, "The trust relationship is one of the primary cornerstones of Indian law."[233] In reality, the trust doctrine is founded upon the United States' assertion

[231] Dann (2002), para. 145, *supra* note 3.
[232] City of Sherrill v. Oneida Indian Nation, 544 U.S. 197 (2005).
[233] S. Rpt. 100-274, 100th Cong., 1st Sess. (December 22, 1987), 3.

of Indigenous incompetency that justifies its exercise of plenary power over "dependent" Indigenous nations for their own "protection" as wards of the State.

154. In 2011, the case of United States v. Jicarilla Apache Nation disposed of a breach-of-trust action filed against the United States Department of Interior by the Jicarilla Apache Nation in the United States Court of Federal Claims.[234] The Jicarilla had claimed that the United States owed them money damages for mismanagement of their natural resources, timber, gravel, oil and gas, extracted from their homelands, *held in trust* by the United States as the self-proclaimed trustee. The United States also *claimed to hold title* as part of its claim of title to all Indigenous lands. The Jicarilla demanded to examine the Interior's management documents to determine the quantity of their resources extracted and sold. The lower federal courts initially granted access to some of the documents, but the US Supreme Court reversed and ruled that the Jicarilla did not have a right to the federal records concerning the Jicarilla's own resources, because:

> [T]he relationship between the United States and Indian tribes is **distinctive, different** from that existing between individuals whether dealing at arm's length or otherwise. The *general* relationship between the United State and Indian tribes is not comparable to a private trust relationship. The difference between a private common-law trust and the statutory Indian trust follows from the unique position of the Government as sovereign.[235]

155. This is yet another example of the race- and colonial- based double standard in State's courts, with one set of rules and principles for non-Indigenous litigants and another set of ever-changing and arbitrary, unfair rules for Indigenous nations. This lack of fairness and remedies for Indigenous nations, their treaty rights and their rights to their ancestral lands is "justified" by the State's claims of assumed plenary, absolute, power over Indigenous nations and its specious claim to hold title to **all** indigenous lands under its "Doctrine of Discovery." The Jicarilla decision went on to explain:

> Throughout the history of the Indian trust relationship, we have recognized that the organization and management of the trust is a sovereign function [of the United States] subject to the plenary authority of Congress. The United State **retains plenary authority to divest the tribes of any attributes of sovereignty**. Congress has **plenary** authority to legislate for the Indian tribes in all matters, including their form of government. Congress has plenary authority over the Indians and all their tribal relations, and full power to legislate concerning their tribal property.[236]

156. Clearly, the "trust" relationship, as defined and exercised by the State as a colonial power, does not preserve or strengthen the sovereignty of Indigenous nations. In

[234] United States v. Jicarilla Apache Nation, 564 U.S. 162 (2011).
[235] *Id*., 564 U.S. at 173-74 (emphasis added, citation and internal quotations omitted).
[236] *Id*., 564 U.S. at 175 (emphasis supplied).

fact and practice, it diminishes Indigenous sovereignty to the benefit only of the United States. This is explained by Justice Alito, in the majority opinion in Jicarilla:

> [T]he Government has often structured the trust relationship to pursue its own policy goals. Thus, while trust administration relates to the welfare of the Indians, the maintenance of the limitations which Congress has prescribed as a part of its plan of distribution is **distinctly an interest of the United States.**[237]

157. The Jicarilla decision goes on to state that the trust relationship is for the benefit of the State, and that it is designed to *control* and *assimilate* Indigenous nations and their citizens:

> In this way, Congress has designed the trust relationship **to serve the interest of the United States**, [which] authorizes the adoption on the part of the United States of such policy as their own public interests may dictate.
>
> Congress has structured the trust relationship to reflect its considered judgment about **how tribes should be governed**. For example, the Indian General Allotment Act of 1887 was a comprehensive congressional attempt to change the role of Indians in American society. Congress aimed to **promote the assimilation** of Indians by dividing Indian lands into individually owned allotments.[238]

158. Another US Supreme Court decision which illustrates the fallacy that the trust relationship benefits Indigenous nations and their sovereignty was the 1980 case of United States v. Mitchell,[239] which also rejected claims for monetary damages from the United States for mismanagement of timber resources on the Quinault Reservation. The Court held that the trust relationship did not impose any duty on the United States:

> We conclude that the [General Allotment] Act created only a limited trust relationship between the United States and the allottee that **does not impose any duty** upon the Government to manage timber resources. . . .
>
> In 1874, this Court determined that Indians held only a right of occupancy, and **not title**, to Indian lands. . . . The General Allotment Act, then, cannot be read as establishing that the United States has a fiduciary responsibility for management of allotted forest lands.[240]

159. Clearly then, within this "trust" framework imposed by the State, title to lands of Indigenous nations and peoples is arbitrarily declared to be possessed by the State, as well as exclusive decision making on all matters involving such lands. Under the trust doctrine promoted by the United States for 150 years and most recently

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[237] *Id*., 564 U.S. at 176 (emphasis supplied).
[238] *Id*., 564 U.S. at 180 (emphasis added, citations and internal quotations omitted).
[239] United States v. Mitchell, 455 U.S. 536 (1980).
[240] *Id*., 455 U.S. at 542, 545-56 (emphasis added, citations and international quotations omitted).

advocated for in the State's Response to this Commission, even Indigenous title (the right of occupancy and use) to Indigenous lands is in effect transferred to the State, and with it the control of the lands and its resources. The State decides how much mining and mineral extraction and development will be permitted and makes all decision on the sale of such assets, with no duty even to properly account to the Indigenous nations. The colonial State maintains complete control over the land and the Indigenous nations. This construct hardly protects Indigenous sovereignty.

160. These are not isolated decisions by the State's Supreme Court but represent a racist and colonial pattern within the State's legal system under which the State has authority over Indigenous lands held in trust while not even answerable to those Indigenous nations. In 2009, Justice Scalia authored another trust related case for the US Supreme Court. In United States v. Navajo Nation,[241] the Court denied a claim by the Navajo Nation for damages based upon claimed breaches by the United States of its fiduciary duties regarding coal mining and royalties from the sale of Navajo coal. The Court ruled that the United States did not have a fiduciary duty to the Navajo, despite the State's "comprehensive control" over coal mining on Navajo territories and homelands. Rather than address the fundamental lack of justice or fairness from this control without responsibility or accountability, the Court found excuses by finding loopholes in acts of Congress. After stating that: "The Federal Government's liability cannot be premised on control alone," the Court proceeded to review domestic statues, in which Congress did not recognize the right of Indigenous nations to challenge decisions about the extraction and sale of their minerals and resources.[242]

161. There is a certain irony within Justice Scalia's decision as it denied the existence of a fiduciary duty in the United States even though there had been a clear finding of the duty by the lower domestic court:

> Let there be no mistake. Notwithstanding the formal outcome of this decision, we find that the Secretary [of Interior] has indeed breached these basic fiduciary duties. There is no plausible defense for a fiduciary to meet secretly with parties having interests adverse to those of the trust beneficiary, adopt the third parties's desired course of action in lieu of action favorable to the beneficiary concerning this event. Even under the most generous interpretation of the series of events . . . **the Secretary violated the common law fiduciary responsibility**.

Despite these strong words, the Navajos were denied accountability or justice:

> The Court finds that the United States violated the most fundamental fiduciary duties of case, loyalty and candor. These violations, serious as they

[241] United States v. Navajo Nation, 556 U.S. 287 (2009).
[242] *Id*., at 455 U.S. at 301.

> are, do not themselves confer jurisdiction on this Court, nor entitle [the Navajo] to money damages. Were this a court of **equitable jurisdiction** considering a private trust, plaintiffs might easily qualify for remedies typically afforded wronged beneficiaries. But a greater showing is required to warrant a remedy in this court.[243]

This decision documents the two levels of the double standard which Indigenous nations face in the State's courts: (a) a separate set of rules apply to their requests for relief-involving both fiduciary rights and land rights; and (b) when "equity" benefits settlers, it is broadly and improperly invoked; but when it should benefit Indigenous nations, it is denied.

162. While these domestic decisions by the State's courts amply demonstrate the many systemic violations of the rights of Indigenous peoples, including Petitioners, to their own territory, lands, resources, self-determination, sovereignty, and well-being, institutionalized within the colonial State's domestic Federal Indian Law, nowhere within the domestic law of the United States does it provide an opportunity, let alone recognize, for the Petitioners and other Indigenous peoples and nations to raise violations of the human rights of Indigenous peoples. As the Commission ruled in Dann[244] and again in Navajo Communities[245], it is the very nature of the institutionalized denial by the colonial State of any effective remedy for its violations of the human rights of Indigenous peoples, such as those violations raised by Petitioners in this proceeding, that defeats the State's fourth instance defense to Petitioners' human rights claims. The Petitioners in this matter assert claims and request relief for violations *only* of human rights secured by the OAS Charter and the American Declaration of the Rights and Duties of Man.[246]

VI. PETITIONERS STATE CLAIMS UNDER THE AMERICAN DECLARATION

A. Article XXIII (Right to Property)

163. As previously discussed in detail at Part II above, the United States as a signatory to the Charter of the Organization of American States is bound by the Charter's provisions. Article 111 of the Charter is implemented by Article 1 of the Commission's Statute which sets forth the responsibility of the Commission to promote and protect human rights which, for States not parties to the American Convention on Human Rights, are defined by the American Declaration of the Rights and Duties of Man, which the

[243] Navajo Nation v. U.S., 48 Fed.Cl. 217, 227 (2000) (emphasis supplied).
[244] Dann (2002), paras. 164, 166, *supra* note 3.
[245] IACHR, Report No. 67/21, Petition 654-11, Navajo Communities of Crownpoint and Church Rock (United States), Admissibility, March 28, 2021, para. 19, *supra* note 243. *See also*, IACHR, Report No. 33/06, Petition 12.261, Philip Workman (United States), Admissibility March 14, 2006, paras. 74, 75.
[246] Petition, para. 182.

United States has also signed.[247] "Thus, the Charter of the Organization cannot be interpreted and applied as far as human rights are concerned without relating its norms, consistent with the practice of the organs of the OAS, to the corresponding provisions of the Declaration."[248] As previously discussed in detail at Part III(B)(1) above, the Commission properly employs other relevant international instruments and case law in interpreting the American Declaration, including the American Convention and the cases thereunder on the right to property, the UN DRIP (which the United States has signed), the ADRIP, the ICERD (including the rulings of the UN CERD), the ICCPR, the ILO 169, etc., as well general principles of international law including the law of fundament rights and *jus cogens* norms, and State responsibility (*erga omnes*). *See discussion*, Part III(B)(2) above.

164. The Petitioners' first claim asserts violations by the State of Petitioners' right to property. Article XXIII of the American Declaration recognizes the human right to property: "Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home."

165. The Petition at Paragraphs 16 through 33 and 53 through 56 sets forth the pre-colonial existence of the Onondaga peoples and sovereign Nation, their pre-colonial existence as a member nation of the Haudenosaunee Confederacy, and their pre-colonial occupation of their ancestral territory for over one thousand years. Petition Paragraphs 5, 20, 27 through 33, and 83 through 86, set forth the formal recognition by the United States of the Onondaga Nation and Haudenosaunee Confederacy as sovereign, independent, nations, and of their territories in three nation-to-nation treaties.

166. The "right to property" protected by the American Declaration has been uniformly construed in many Commission decisions to include the territory and lands that Indigenous peoples, like the Onondaga and Haudenosaunee, have traditionally used and occupied.[249] As the Commission opined in its decision regarding the Xucuru Indigenous Peoples:

> It is also necessary to note that as has consistently been established by the organs of the Inter-American system, the indigenous territorial property is a form of property that is not based on official recognition of the State, but in the use and possession of traditional lands and resources; the territories of

[247] *See*, Dann (2002), para. 131, *supra* note 3; Bernard (1994), p. 9 (para. 4), *supra* note 128.
[248] Our Land (2020), n. 183, *supra* note 129. *Also*, Jawad (2022), para. 15, *supra* note 133; Padilla (2019), para. 26, *supra* note 122.
[249] Dann (2002), paras. 45-49, 130, *supra* note 43; Xucuru (2015), para. 66, *supra* note 207; Maya (2004), para. 151, *supra* note 204.

> indigenous and tribal people belong to them by use or ancestral occupation. The right of indigenous communal property is also based on indigenous legal cultures and their ancestral property systems, regardless of the state recognition; the origin of the property rights of indigenous and tribal peoples is therefore in the customary system of land tenure, which has traditionally existed between the communities. As a result, the Court has stated that traditional possession of indigenous over their land is equivalent to the title of full domain granted by the State.[250]

167. The Petition at Paragraphs 24 through 26 describe the unlawful invasion of Onondaga and Haudenosaunee territories and the massacres of their people by European and American colonists. Paragraphs 34 through 52 set forth the illegal taking of their territories, lands, and natural resources by a subdivision of the United States, the state of New York. Paragraphs 5 and 76 through 136 describe the abject failure of the United States to meet its treaty obligations to protect the Onondaga Nation and Haudenosaunee Confederacy from the invasions and takings of their territories and lands. As the Commission ruled in Dann,[251] these State sanctioned thefts of Indigenous territory and lands are violations of the American Declaration's guarantees of the right to property.[252]

168. The further subsequent and continuing exploitation and severe contamination of Onondaga lands, waters, and people by extractive industries under license by the United States and its subdivisions which deprive or interfere with their use of such lands is described in Paragraphs 57 through 75. Petition Paragraphs 4 and 53 through 56 describe some of the harms suffered by the Onondaga and Haudenosaunee from the loss of their lands and territories, including their separation from their traditional hunting, gathering and fishing areas, the deprivation of traditional food and other resources necessary for their well-being and survival, the separation from their sacred lands where their ancestors are buried, the interference with their sacred duty to care for ancestral lands and gravesites, and the severe harm to their culture and survival. "[T]he right to property protects not only the connection of the indigenous communities to their territories, but also the natural resources these territories contain that are connected to their culture, as well as the intangible elements derived from them."[253] These harms arise

[250] Xucuru (2015), *id.* (citations omitted), *also*, para. 70, *supra* note 207.
[251] Dann (2002), paras. 45-49, 130, *supra* note 3.
[252] *See further*, Our Land (2020), paras. 95, 153-154, *supra* note 129; Xucuru (2015), para. 79 ("Finally, the Inter-American Court has indicated since 2001 …that States must ensure the effective property of indigenous people."), *supra* note 207; Punta Piedra (2015), para. 168, n. 206, *supra* note 205; Case of the Sawhoyamaxa Indigenous Community v. Paraguay, Merits, reparations and costs, Judgment of March 29, 2006, Series C No. 146, para. 128; Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, reparations and costs, Judgment of June 17, 2005, Series C No. 125, paras. 124-131, 141; Awas Tingni (2001), paras. 148-151, *supra* note 219.
[253] Our Land (2020), para. 94, *id*. *See also*, Case of the Saramaka People. v. Suriname. Preliminary objections, merits, reparations and costs, Judgment of November 28, 2007, Series C No. 173, para. 90; Case of the

out of further violations by the State of the Onondaga and Haudenosaunee collective human rights to property.

169. The Petition herein properly and clearly states claims against the United States on the merits for violations of the human right to property of the Onondaga Nation and the Haudenosaunee Confederation.

B. Article II (Right to Equality)

170. Petitioners' second claim asserts violations by the State of their right to equality. Article II of American Declaration states: "*All persons are equal before the law and have rights and duties established in this Declaration without discrimination as to race, sex, language, creed or any other factor.*" (emphasis supplied)

171. On this right to equality found in the American Declaration, the Commission remarked in Ameziane:

> The principles of equality before the law, equal protection, and non-discrimination are among the most basic human rights, and are in fact recognized by the Inter-American Court as *jus cogens* norms, because the whole legal structure of national and international public order rests on it. Nowadays, no legal act that is in conflict with this fundamental principle is acceptable, and discriminatory treatment of any person, owing to gender, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property, civil status, birth or any other status is unacceptable. States are required to ensure that their laws, policies and practices respect these rights; in particular, international human rights law not only prohibits policies and practices that are deliberately discriminatory, but also those which have a discriminatory effect, even when discriminatory intent cannot be shown.[254]

172. The unique role of the right to equality in the protection and expression of other human rights has been described by the Commission:

Sawhoyamaxa (2006), para. 118, *supra* note 204; Yakye Axa (2005), paras. 131, 132, 137, *id*..; Awas Tingni (2001), paras. 148, 149 and 151, *supra* note 219.

[254] Ameziane (2020), para. 249 (*quoting from* Juridical Condition and Rights of Undocumented Migrants, paras. 101, 120, p. 23), *supra* note 185; *also*, IACHR, Report No. 125/12, Case 12.354. Kuna (2012), n. 378, *supra* note 166.

> There is an inseparable connection between the obligation to respect and guarantee human rights and the principle of equality and non-discrimination. States are obliged to respect and guarantee the full and free exercise of rights and freedoms without any discrimination. Non-compliance by the State with the general obligation to respect and guarantee human rights, owing to any discriminatory treatment, gives rise to its international responsibility. The principle of the equal and effective protection of the law and of nondiscrimination is embodied in many international instruments. The fact that the principle of equality and non-discrimination is regulated in so many international instruments is evidence that there is a universal obligation to respect and guarantee the human rights arising from that general basic principle. The principle of equality before the law and non-discrimination has been developed in international case law and legal writings. The Inter-American Court has understood that:
>
> [t]he notion of equality springs directly from the oneness of the human family and is linked to the essential dignity of the individual. That principle cannot be reconciled with the notion that a given group has the right to privileged treatment because of its perceived superiority. It is equally irreconcilable with that notion to characterize a group as inferior and treat it with hostility or otherwise subject it to discrimination in the enjoyment of rights that are accorded to others not so classified. It is impermissible to subject human beings to differences in treatment that are inconsistent with their unique and congenerous character. [I.-A. Court H.R., *Legal Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 45]
>
> The principle of equality and non-discrimination is fundamental for the safeguard of human rights in both international and domestic law. Consequently, States have the obligation to combat discriminatory practices and not to introduce discriminatory regulations into their laws.[255]

Also,

> In particular, when referring to the obligation to respect and ensure human rights, regardless of which of those rights are recognized by each State in domestic or international norms, the Court considers it clear that all States, as members of the international community, must comply with these

[255] Juridical Condition and Rights of Undocumented Migrants, paras. 87, 88.

> obligations without any discrimination; this is intrinsically related to the right to equal protection before the law, which, in turn, derives "directly from the oneness of the human family and is linked to the essential dignity of the individual." The principle of equality before the law and non-discrimination permeates every act of the powers of the State, in all their manifestations, related to respecting and ensuring human rights. Indeed, this principle may be considered peremptory under general international law, inasmuch as it applies to all States, whether or not they are party to a specific international treaty, and gives rise to effects with regard to third parties, including individuals. This implies that the State, both internationally and in its domestic legal system, and by means of the acts of any of its powers or of third parties who act under its tolerance, acquiescence or negligence, cannot behave in a way that is contrary to the principle of equality and non-discrimination, to the detriment of a determined group of persons.[256]

173. In other words, the right to equality affirms a juridical personality, an equal seat at the table, and a voice for victims of violations of other human rights. The right to have rights. By their very nature, the three colonial doctrines of the "Indian" law of the United States - discovery (the denial of the equal existence and sovereign rights of indigenous nations and peoples over their territories), trust (the denial of an equal legal personality thus depriving the victims of the trust relationship of their legal standing, competency and voice), and plenary power (unequal power, the exercise of supreme and absolute power by a dominate nation over other nations and peoples) – self-defining the relationship between the United States and the Onondaga Nation and Haudenosaunee Confederacy as incompetent, dependent, colonized, "Indians", are hard denials of their rights to equality before the law. *See discussion above*, Paragraphs 16 through 25 and Paragraphs 29 through 32.

174. The right to equality is recognized as a fundamental right and a *jus cogens* norm. See discussion above at Paragraphs 85 and 88 through 100 (esp. Paragraph 99). There are over two dozen international instruments supporting this principal, including the O.A.S. and U.N. Charters.[257] On the interpretation and application of the American Declaration's guarantee of the right to equality, the Commission may properly refer to the leading international document on the right, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[258] See discussion above at Paragraphs 29 through 31. The ICERD, *signed and ratified by the United States*, arises

[256] Juridical Condition and Rights of Undocumented Migrants, para. 100.
[257] I/A Court H. R., Case of the Xákmok Kásek Indigenous Community v. Paraguay, Judgment of August 24, 2010, Series C No. 214, para. 269.
[258] *See*, Dann (2002), para. 58, *supra* note 43; Kuna (2012), para. 290, *supra* note 166.

from the Charter of the United Nations and notes that the Charter "is based on the principles of the dignity and equality inherent in all human beings," and that "all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination."[259] The ICERD unequivocally condemns racial (and ethnic) discrimination: "*Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere*."[260] The Convention calls for the elimination of racism "by all appropriate means and without delay" "in all its forms".[261] It further explicitly identifies and condemns colonialism as a form of racism.[262]

175. The Petition at Paragraphs 3 through 5, 24 through 26, 34 through 52, and 76 through 136, describes the United States's past *and present* colonial and plenary subjugation of the Onondaga and Haudenosaunee peoples, Nation, and Confederacy, along with other Indigenous peoples and nations, for over 200 years to a separate set of laws because they are "Indians", described by the ruling Supreme power as a heathen (non-Christian), savage, incompetent, uncivilized, dependent, race of people. This set of laws, exclusive ("sui generis") to "Indians," is not based upon treaties and the relationship of "Indian" nations as pre-existing sovereigns equal with the United States under international law. Rather, the State's federal Indian law concocted to "legalize" the taking of the territory and lands of the Onondaga and Haudenosaunee is based upon the arbitrary, plenary, colonial, occupation and rule of a more powerful nation over the original Indigenous peoples and sovereign first nations found within the arbitrary boundaries of the colonial State. In the words of the founder of federal Indian law, John Marshall in M'Intosh, the imposition of colonial rule and theft was and is justified by "the character and religion of its inhabitants [affording] an apology for considering them as a people over whom the superior genius of Europe might claim an ascendency."[263] The "federal Indian law" of the United States is by its very definition institutionalized systemic racial and ethnic, and religious, discrimination.

176. The Commission recently opined in the case of Cuban and Haitian Nationals on the centrality of the right to equality to guarantee of all other human rights.

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[259] ICERD, Preamble, paras. 1, 2. *See also*, Universal Declaration of Human Rights, Preamble (1948), para. 1, Art. 1, Art. 7, Art. 8; the American Convention on Human Rights (1969), Art. 1, Art. 3, Art. 24, Art. 25; the American Convention Against All Forms of Discrimination and Intolerance ("ACADI") (2013), generally; and the American Convention Against Racism, Racial Discrimination and Related Forms of Intolerance ("ACARD") (2013), generally, recognizing the inherent dignity and equality of all members of the human family.
[260] ICERD, Preamble, para. 5 (emphasis supplied).
[261] ICERD, Art. 2.
[262] ICERD, Preamble, para. 3 (incorporating UN General Assembly resolution 1514(XV) (14 December 1960)).
[263] *Supra* footnote 7.

> [B]oth the Commission and the Court have observed that the right to equal protection and non-discrimination is the central, basic axis of the Inter-American human rights system. The right to equality before the law and the obligation not to discriminate against any person constitute the basic foundation of the Inter-American system of human rights. …Article 3 of the OAS Charter includes among the principles reaffirmed by the American States the proclamation of "the fundamental rights of the human person without distinction of race, nationality, creed or sex".[264]

177. The extension of the equal rights of *all* peoples and nations to Indigenous peoples is the foundation of the seminal 2007 UN Declaration on the Rights of Indigenous Peoples.[265] The UN DRIP was made necessary by the conduct of the United States and other colonial and successor colonial powers which in exercising their rule discrimination against the original Indigenous nations and peoples found within their colonial borders. In addition to the racially and ethnically discriminatory laws like those of the United States described above, even the ILO 169 as late as 1989, lauded as a ground-breaking international guarantee of Indigenous rights, under pressure of colonial and successor colonial States was careful to distinguish the rights of Indigenous and "tribal" peoples from those of all other peoples of the world. "The use of the term ***peoples*** in this Convention shall not be construed as having implications as regards to the rights which may attach to the term under international law."[266]

178. Less than 20 years later, the UN DRIP (belatedly signed by the United States with reservations) in its Preamble and Article 2 declares "**Indigenous peoples and individuals are free and equal to all other peoples** and individuals and *have the right to be free from any kind of discrimination*, in the exercise of their rights, in particular that based on their indigenous origin or identity." (emphasis supplied) The Declaration further states at Article 1 that "**Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law**." (emphasis supplied) The UN DRIP did not establish in Indigenous peoples any other rights that did not already exist under the law for all other peoples of the world. It is shameful that it was necessary for the UN General Assembly only a few years ago to specifically and expressly declare the extension of those same rights to Indigenous peoples, including the Onondaga and Haudenosaunee. It was only in 2016, less than 7 years ago, that the OAS General

[264] IACHR, Report No. 459/21. Case 12.071. Merits (Publication). Cuban and Haitian Nationals Detained at and Deported from the Carmichael Road Detention Center. Bahamas. 31 December 2021, para. 76 (citations omitted).
[265] UN DRIP, Preamble, Paragraphs 2, 4, 5, 16, 17, 22, Articles 1, 2, 3, 4, etc.
[266] ILO 169 (1989), Art. 1, Sec. 3.

Assembly adopted the American Declaration on the Rights of Indigenous Peoples – over for obvious reasons the objections of the United States as a colonial State.

179. In 2012, the Commission in Kuna, citing the UN DRIP, acknowledged these developments in the international law of Indigenous peoples "Indigenous persons and peoples also have fundamental rights to equality and to be free from all forms of discrimination – in particular all forms of racial discrimination based on their ethnic origin. These rights acquire additional specific content in the case of indigenous peoples."[267]

180. It is clear, then, that the underlying barrier to the realization of the Onondaga and Haudenosaunee right to property discussed above, was and continues to be the denial by the United States of their right to equality. The special (past and continuing colonial) relationship between "Indian" peoples and nations and the colonial power, the United States, and the race-based laws the colonial State imposed exclusively upon Indian peoples and nations to enforce its rule were used under the State's assumed arbitrary and plenary power to deprive the Onondaga Nation and its people and the Haudenosaunee Confederacy of their territory, lands, and natural resources as set forth in the Petition.

181. In the Dann matter before the Commission, the Petitioners also asserted an Article II equal protection claim arising out of the United States's "interference with the Dann's occupation and use of the Western Shoshone ancestral lands," such as by "the absence of substantive protections for indigenous property rights, including those rights derived from Western Shoshone aboriginal title, that are equal to the protections accorded to non-indigenous forms of property." [268] As in Dann, by the sole reason of the Petitioners' racial / ethnic status as "Indians" the State failed to honor its obligations to protect the Onondaga Nation and the Haudenosaunee Confederacy from the takings by the state of New York and the settler invasions. Petition, Paragraphs 5, 8, 27 through 32 (treaty protections), 34 through 52 (treaty violations and takings), and 76 through 136 (State's failure to protect).

182. As a colonial power and ruler over the Onondaga Nation and Haudenosaunee Confederacy, again by reason of their imposed racial / ethnic status as incompetent Indians, the State further failed and continues to fail its obligations under the international law of occupation to respect and protect their territorial and land rights. See discussion on the obligations of colonial and successor colonial states above at Paragraph 28.

[267] Kuna (2012), para. 289, *supra* note 166.
[268] Dann (2002), paras. 53, 55, *supra* note 3.

183. The Petitioners in Dann also referred to the Mabo I decision of the Australian High Court in which the Court applying the ICERD concluded that "a legislative measure targeting native title for legal extinguishment to the exclusion of non-indigenous property rights was racially discriminatory and therefore invalid."[269] The entire body of the State's "federal Indian law" racially targets Native title, including that of the Onondaga Nation and peoples and of the Haudenosaunee Confederacy, for exploitation and extinguishment. See the discussion above at Paragraphs 16 through 26. As recently as 2020, the Supreme Court of the United States in its McGirt decision self-servingly affirmed the assumed plenary power of the colonial State to extinguish the territory and land title of "Indian" nations at will[270] as it did with the Petitioners in this matter. See, Petition, Paragraphs 89 through 125 and 126 through 136 (denial of legal remedy).

184. As described in Paragraph 31 above, the UNCERD in 2006 issued a decision concluding that the domestic law of the United States regarding indigenous land rights "did not comply with contemporary international human rights norms, principles and standards that govern the determination of indigenous property interests, as stressed by the Inter-American Commission on Human Rights in the case Mary and Carrie Dann versus United States (Case 11.140, 27 December 2002)."[271] The Committee held that actions taken by the United States regarding Indigenous ancestral lands violated the State's obligation "to guarantee the right to everyone to equality before the law in the enjoyment of civil, political, economic, social and cultural rights, without discrimination based on race colour, or national or ethnic origin, …in particular their right to own, develop, control and use their communal lands, territories and resources."[272] In so ruling, the UNCERD recognized, as stated in the ICERD Preamble and in General Recommendation 23, that the surviving and continuing colonial relationship between States and indigenous peoples and nations is a racist and unlawfully discriminatory one.[273] The Committee's findings and rulings as a matter of law of the violations of equality before the law by the State's domestic federal Indian law fully apply to the colonial State's treatment of the Onondaga Nation and the Haudenosaunee Confederacy.

185. For these reasons, the Petition herein states clear violations of the rights of the Petitioners to equality before the law secured by Article II of the American Declaration.

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[269] Dann (2002), para. 58 (citing Mabo v. Queensland [No. 1] (1988), 166 C.L.R. 186), *supra* note 3.
[270] *Supra* footnote 30. *Also*, *supra* footnote 29 regarding the State's assumed plenary authority to take Indian territory and lands, and any residual Indian title, at will.
[271] UNCERD, Western Shoshone (2006), *supra* note 46.
[272] *Id.*, para. 7.
[273] *See also*, *supra* note 6.

C. Article XVIII (Rights to Judicial Protection and Due Process)

185. Article XVIII of the American Declaration on the Rights and Duties of Man states that *"[e]very person may resort to the courts to ensure respect for his legal rights." It further requires that States must provide "a simple, brief procedure whereby the courts will protect [every person (including, collectively, Indigenous peoples)] from acts of authority that, to his prejudice, violate any fundamental …rights."* (emphasis supplied) This right is properly interpreted in the context of other international human rights instruments. The American Convention on Human Rights at Article 25 refers to it as the "right to judicial protection." It is referred to elsewhere in international law as the "right to an effective remedy."[274] It has been characterized as one of the most fundamental and essential rights as it is necessary for the effective protection of all other human rights.[275]

186. Judicial protection and effective remedies are interrelated as judicial protection is rendered meaningless if no effective remedy is available. Article 63(1) of the American Convention, for example, requires that the Inter-American Court on Human Rights order, "if appropriate, that the consequences of [any Convention violation] be remedied and that fair compensation be paid." The Court has held that this provision codifies what is known as the Chrozów Factory rule of State responsibility in international law of no right without a remedy.[276]

187. The right to "judicial protection" links the right to a remedy with the right to full reparations, which determines if a remedy is meaningful, "effective." The UN Principles on Reparations, for example cited by the Commission in the Salas case,[277] obligates States to "incorporat[e] norms of international human rights law …into their domestic law," "provide fair, effective and prompt access to justice," and "mak[e] available adequate, effective, prompt and appropriate remedies, including reparation," that "ensur[es] that their domestic law provides at least the same level of protection for victims [of human rights violations] as that required by their international obligations."[278] The Commission in Salas stated further:

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[274] *See*, *e.g.*, Universal Declaration of Human Rights, G.A. Res. 217A, Article 8, U.N. GAOR, 3d Sess., 1st Plenary Meeting, U.N. Doc. A/810 (Dec. 12, 1948); ICCPR, Articles 2.3(a), 9(5); ICERD, Article 6.
[275] Report of the Special Representative on human rights defenders, U.N. Doc. A/56/341 (2001), para. 9.
[276] Garrido & Baigorria Case, 1998 I/A Ct. H.R. (ser. C) No. 39, at 10 (August 27, 1998); Chrozów Factory (Ger. V. Pol.), 1928 P.C.I.J. (ser. A) No. 17, at 29 (September 13); *accord* Durand & Ugarte Case, 2001 I/A Ct. H.R. (ser. C) No. 89, at 6 (August 16, 2000) ("[A]ny violation of an international obligation carries with it the obligation to make adequate reparation.").
[277] Salas (2018), paras. 43-4399, *supra* note 155.
[278] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147

> The General Assembly also determined that the victim's rights under international law include the following: "(a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c) Access to relevant information concerning violations and reparation mechanisms."683 For reparation to be adequate, effective, and prompt, the General Assembly found that it should be proportional to the gravity of the violations and the harm suffered and be intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law.[279]

188. Implicit in Article XVIII of the American Declaration is the right to judicial procedures that are in accordance with fundamental principles of fairness and due process of law. On role of the right to due process of law, the Commission has opined:

> […] for "the due process of law" a [party] must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants. It is important to recall that the judicial process is a means to ensure, insofar as possible, an equitable resolution of a difference. The body of procedures, of diverse character and generally grouped under the heading of the due process, is all calculated to serve that end. To protect the individual and see justice done, the historical development of the judicial process has introduced new procedural rights. …
>
> To accomplish its objectives, the judicial process must recognize and correct any real disadvantages that those brought before the bar might have, thus observing the principle of equality before the law and the courts and the corollary principle prohibiting discrimination. The presence of real disadvantages necessitates countervailing measures that help to reduce or eliminate the obstacles and deficiencies that impair or diminish an effective defense of one's interests. Absent those countervailing measures, widely recognized in various stages of the proceeding, one could hardly say that those who have the disadvantages enjoy a true opportunity for justice and the

(2005), sec. 2, *also* Parts VIII (Access to justice), IX (Reparation for harm suffered). *See*, International Commission of Jurists, The Right to a Remedy and Reparation for Gross Human Rights Violations: A Practitioners' Guide (Rev. ed., 2018), https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf.

[279] Salas (2018), para. 439, *supra* note 155.

> benefit of the due process of law equal to those who do not have those disadvantages.[280]

189. On this, the Inter-American Court stated in Saramaka, a matter involving Indigenous lands and territory:

> [T]he State's obligation to provide judicial recourse is not simply met by the mere existence of courts or formal procedures, or even by the possibility of resorting to the courts. Rather, the State has the duty to adopt positive measures to guarantee that the remedies it provides through the justice system are "truly effective in establishing whether there has been a violation of human rights and in providing redress." Accordingly, the Court has declared that "[t]he inexistence of an effective recourse against the violation of the rights recognized by the Convention constitutes a transgression of the Convention by the State Party in which such a situation occurs."[281]

190. Further, the rights to judicial protection and due process are meaningless unless framed within the right to recognition of a juridical personality, the right to have rights.[282] Without the recognition of a juridical personality, victims of human rights violations do not even have access to seek judicial enforcement of their rights.

> [T]he right to have their juridical personality recognized by the State is one of the special measures owed to indigenous and tribal groups in order to ensure that they are able to use and enjoy their territory in accordance with their own traditions. Failure to recognize their juridical personality places the indigenous community in a vulnerable situation because (i) individual property rights may trump collective rights over communal property, and (ii) indigenous people may not seek, as a collective juridical personality, judicial protection against violations of their rights.

191. Colonialism by its very nature denies occupied peoples in whole or part both a juridical personality and judicial protection, including due process. See discussion above at Paragraphs 14, 16 through 28, 48 through 50. The "trust doctrine" of federal, colonial, Indian law of the United States expressly declares Indigenous peoples and nations to be incompetent savages subject to limited juridical recognition and the assumed plenary authority of the ruling power. Paragraphs 21 through 25, above.

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[280] I/A Court H.R., Advisory Opinion OC-16/99. "The Right to Information on Consular Assistance in the Framework of the Guarantees of Due Process. October 1, 1999. Series A No. 16, paras. 117 and 119; *see also*, Juridical Condition and Rights of Undocumented Migrants, paras. 120-121; Colangelo, *supra* Note 189.
[281] Saramaka (2007), para. 177 (citations omitted), *supra* note 253.
[282] Saramaka (2007), paras. 159-173, *supra* note 253; Our Land (2020), para. 155, *supra* note 129; Kalina (2013), paras. 83-87, *supra* note 146.

192. It was under this colonial law that the State exercised its assumed plenary power to design and limit the only legal and insufficient remedies available to the Onondaga Nation and the Haudenosaunee for the State's violation of its treaty obligations and the theft and contamination of Onondaga and Haudenosaunee lands and territory. *See*, Paragraphs 25 (citing Petition Paragraphs 35 through 52 and 57 through 125), 54, above, and Petition Paragraphs 126 through 136.

193. At the core of Petitioner's claims is the failure of the colonial power, the United States, to provide any legal remedy, let alone an equal, fair, adequate, and effective one, under its domestic law for the unlawful taking of Onondaga and Haudenosaunee property – its territory, lands, and resources. Petition Paragraphs 3, 4, Part VIII.D. (denial of diplomatic remedies), Parts VIII. E. and F (denial of effective judicial remedies). Upon the abject failure of diplomatic efforts by the Onondaga and Haudenosaunee to remedy the theft and contamination of their territory and lands, they pursued some 40 years of ineffective domestic court litigation from the trial courts to the US Supreme Court. Petition Paragraphs 98 through 136. In order to dismiss the Onondaga Nation's land rights action, the colonial courts even resorted to creating a new Indian-specific (race- colonial- based) "equitable defense" under domestic law to defeat the Onondaga and Haudenosaunee claims to their territories, lands, and resources. Petition Paragraphs 126 through 136.

194. This "profound change" in the State's domestic law that now prevents the Onondaga Nation and Haudenosaunee Confederacy from seeking any remedy for the illegal taking of their territory, lands, and resources has occurred simultaneously with the growing recognition by this Commission, the Inter-American Court, and international law of the rights of Indigenous peoples to their property, to equal treatment, and to judicial protection. By creating and applying such a ruling, the State has violated the rights of the Onondaga Nation and the Haudenosaunee Confederacy, and their citizens, to judicial protection, secured by Article XVIII of the American Declaration.

VII. CONCLUSION

195. The Onondaga Nation and the Haudenosaunee Confederacy make this supplemental submission on the merits in support of their Petition. These submissions demonstrate the merits of each of the Petitioners' claims herein.

196. The Commission in Dann concluded that "the State failed to ensure the Danns' right to property under conditions of equality contrary to Article II, XVIII and XXIII of the American Declaration in connection with the Western Shoshone ancestral

lands.[283] An equally if not more compelling case of the State's violations of these same human rights is set forth in the Petition of the Onondaga Nation and Haudenosaunee Confederacy in this matter.

197. The federal colonial Indian law of the United States, most particularly its Plenary Power doctrine, by denying or substantively limiting adequate remedies to Indigenous nations and peoples, operates as a "self-amnesty" whereunder the colonial State may act with a self-endowed impunity in the widespread systemic violations of the human rights of the Onondaga Nation and Haudenosaunee Confederacy. The Commission and Court have uniformly condemned State "self-amnesty" practice of institutionalizing obstacles to accountability for human rights violations.[284]

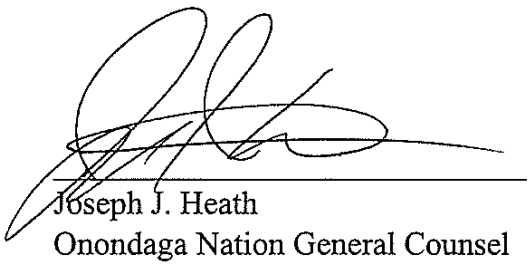
198. The State's conduct towards and rule over the Onondaga and Haudenosaunee is a colonial one, condemned under international law and by the community of nations, the General Assembly of the United Nations, in all its "forms and manifestations" for over 70 years. Fairness and justice call for the exposure, ending, and remediation of the colonial thefts and contamination – continuing to this day – of Onondaga and Haudenosaunee property and attendant serious collective human rights violations.

199. For the foregoing reasons, the Onondaga Nation and Haudenosaunee Confederacy request that the Commission find their Petition meritorious and issue a report setting forth all the facts and applicable law, declaring the United States to have violated the rights secured to them by the American Declaration of the Rights and Duties of Man, including the Petitioners' Article II Right to Equality, the Petitioners' Article XVIII right to a judicial remedy (a fair trial / judicial protection), and, upon reconsideration, the Petitioners' Article XXIII Collective Right to Property, and such other rights as the Commission in its discretion may wish to consider and include. The Petitioners further request that the Commission thereupon order and recommend such other remedial measures and mechanisms as it may find necessary, just, and appropriate under international law as requested in the Petition.

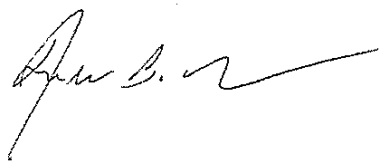
[283] Dann (2002), para. 172, *supra* note 3.
[284] *See*, IACHR Cases 10.147. 10.181, 10.240, 10.262, 10.309, 10.311; IACHR, Report No. 28/92, OEA/Ser.L/V/II.83, doc. 14, corr.1 (1992-93) (Argentina); ICHR Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374, 10.375; IACHR Report No. 29/92, OEA/Ser.L/V/II.83, doc. 14, corr.1 (1992-93) (Uruguay); *also*, I/A Court H.R., *Almonacid v. Chile*, Judgment of September 26, 2006, Ser. C No. 154, paras. 111, 119; I/A Court H.R., *Barrios Altos v. Peru*. Judgment of March 14, 2001, Series C No. 75, paras. 41, 42. *Also*, Christina Binder, "The Prohibition of Amnesties by the Inter-American Court of Human Rights," 12(5) German L. J. 1203 (2011).

Signed this 25th day of December, 2023.

Attorneys for Petitioners:



Joseph J. Heath
Onondaga Nation General Counsel
512 Jamesville Avenue
Syracuse, New York 13210
Telephone: (315) 447-4851
Email: jheath@atsny.com



Andrew B. Reid
Native Justice, LLC
1075 Waite Drive
Boulder, Colorado 80303
Telephone: (303) 437-0280
Email: kota@nativejustice.net